

No. 12738

United States
Court of Appeals
for the Ninth Circuit.

FRED D. HILLIARD, as Receiver of JESSE M.
CHASE, INC., a Corporation,

Appellant,

vs.

LOUISE B. MUSSELMAN SISIL,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Idaho,
Eastern Division.

FILED

OCT 13 1951

PAUL P. O'BRIEN,

CLERK

No. 12738

United States
Court of Appeals
for the Ninth Circuit.

FRED D. HILLIARD, as Receiver of JESSE M.
CHASE, INC., a Corporation,

Appellant,

vs.

LOUISE B. MUSSELMAN SISIL,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Idaho,
Eastern Division.

1853

1854

1855

1856

1857

1858

1859

1860

1861

1862

1863

1864

1865

1866

1867

1868

1869

1870

1871

1872

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Amended Answer to Amended Complaint.....	12
Answer to Amended Complaint.....	9
Appeal:	
Designation of Record on.....	34
Notice of.....	33
Statement of Points on.....	99
Certificate of Clerk.....	97
Designation of Record on Appeal.....	34
Findings of Fact and Conclusions of Law.....	20
Conclusions of Law.....	27
Findings of Fact.....	21
Judgment	30
Memorandum	18
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	33
Order	35
Petition for Removal of Cause.....	3
Exhibit A—Amended Complaint.....	6

INDEX	PAGE
Statement of Points.....	99
Stipulation	35
Transcript of Proceedings.....	36
Witnesses, Defendant's:	
Burnett, Donald L.	
—cross	40
—redirect	55
Chase, Jesse M.	
—cross	63
—redirect	71
—recross	74
Nelson, I. H.	
—direct	59
—cross	62
Witnesses, Plaintiff's:	
Burnett, Donald L.	
—direct	82
—cross	85
—redirect	88
—recross	91

INDEX

PAGE

Witnesses, Plaintiff's—(Continued) :

Chase, Jesse M.

—direct 38

Hubble, Walter R.

—direct 76

—cross 80

—redirect 81

—recross 81

NAMES AND ADDRESSES OF ATTORNEYS

For the Plaintiff:

F. M. BISTLINE, ESQ.,
Pocatello, Idaho.

For the Defendant:

BEN W. DAVIS, ESQ.,
Pocatello, Idaho.

In the District Court of the United States in and
for the District of Idaho, Eastern Division

No. 1592

FRED D. HILLIARD as Receiver of JESSE M.
CHASE, INC., a Corporation,

Plaintiff,

vs.

LOUISE B. MUSSELMAN SISIL,

Defendant.

PETITION FOR REMOVAL OF CAUSE

To the Honorable Chase A. Clark, Judge of the
United States District Court for the District of
Idaho, Eastern Division:

Comes now Louise B. Musselman Sisil, the above-named defendant and files this petition for removal of this cause from the District Court of the Fifth Judicial District of the State of Idaho in and for Bannock County, in which it is now pending, to the District Court of the United States for the District of Idaho, Eastern Division, and makes the following statement of facts which entitles the defendant to a removal of said action:

I.

That attached hereto is a copy of the Amended Complaint filed in the State District Court, said complaint is marked Exhibit "A" and by this reference made a part hereof.

II.

That the plaintiff is and at all times herein mentioned, has been a resident of the State of Idaho and that Jesse M. Chase, Inc., a corporation is an Idaho corporation with its principal place of business at Pocatello; that Louise B. Musselman Sisil, defendant is a bona fide resident of the State of California and was served with summons and complaint in the above-entitled cause on the 30th day of November, 1949.

III.

That the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000; that the real estate described in plaintiff's complaint and to which title is sought to be quieted, is of the approximate value of \$70,000.00; that the defendant herein claims a lien upon said real estate by reason of a judgment obtained in the above-entitled court wherein Louise B. Musselman Sisil was plaintiff and Jesse M. Chase defendant; said judgment being in the amount of \$10,330.73; that she also claims a lien upon said property by reason of a certificate of sale issued to her by the United States Marshal for the District of Idaho and for which she bid or paid the sum of \$3,250.00.

IV.

That defendant files herewith a bond in the sum of \$500.00.

Wherefore, your petitioner prays that said cause be removed to the United States District Court for the District of Idaho, Eastern Division and for

such other and further Order as may be just and proper in the premises.

LOUISE B. MUSSELMAN
SISIL,

By /s/ B. W. DAVIS,
Her Attorney.

State of Idaho,
County of Bannock—ss.

B. W. Davis, being first duly sworn, deposes and says:

That he is the attorney for Louise B. Musselman Sisil and that he makes this verification for and on her behalf; that the reason he makes the same is because the said Louise B. Musselman Sisil is not within the State of Idaho and that this affiant is familiar with all of the facts set forth in this Petition; that he has read the above and foregoing petition, knows the contents thereof and the facts therein stated are true.

/s/ B. W. DAVIS.

Subscribed and sworn to before me this 8th day of December, 1949.

[Seal] /s/ LAURA S. GOUGH,
Notary Public.

Exhibit "A"

In the District Court of the Fifth Judicial District
of the State of Idaho, in and for Bannock County

FRED D. HILLIARD, as Receiver of JESSE M.
CHASE, INC., a Corporation,

Plaintiff,

vs.

LOUISE B. MUSSELMAN SISIL,

Defendant.

AMENDED COMPLAINT

For cause of action against the above-named defendant, plaintiff alleges:

I.

That plaintiff is the duly appointed, qualified and acting Receiver of the Jesse M. Chase, Inc., a corporation, by virtue of an order of the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County, in an action entitled J. A. Youngren, plaintiff, vs. Jesse M. Chase, Inc., a corporation, made on the 5th day of November, 1949, and subsequently qualification as such receiver by filing the necessary oath and giving bond as required on order of the said court.

II.

That the said Jesse M. Chase, Inc., is now, and at all the times herein mentioned, was a corporation, organized and existing under and by virtue of the

laws of the State of Idaho, with its principal place of business at Pocatello, Bannock County, Idaho.

III.

That plaintiff, as Receiver of said Jesse M. Chase, Inc., a corporation, is now the owner in fee simple and in possession of the following described real estate situate in Bannock County, Idaho, to wit:

Lots 6 and 7 in Block 267; North 25 feet of Lot 15 and all of Lot 16 in Block 235, and Lots 17, 18, 19 and 20 inclusive, in Block 235 all in Pocatello Townsite, Bannock County, Idaho, according to the official plat of the survey of said lands returned to the General Land Office by the Surveyor General.

IV.

That the defendant, Louise B. Musselman Sisil, claims some estate, right, title or interest in and to said property adverse to plaintiff's interest; that the claim of said defendant is without any right whatsoever, and said defendant has no right, title, interest or estate whatsoever in and to said above described real property, or any part or portion thereof.

Wherefore, Plaintiff prays judgment: That the defendant, Louise B. Musselman Sisil, be required to set forth the nature of her claims, and that all adverse claims may be determined by a decree of this court; that by said decree it be declared and adjudged that plaintiff is the owner in fee simple of said premises described in said complaint, as Receiver of Jesse M. Chase, Inc.; that the defendant,

Louise B. Musselman Sisil be decreed to have no estate, right, title or interest whatsoever in and to said real property or any part thereof, and that the title of the plaintiff to said lands and premises is good and valid.

That it be further adjudged and decreed that said Louise B. Musselman Sisil, be forever enjoined and debarred from asserting any right, title, interest, claim or estate whatever in and to said lands and premises, or any part thereof, adverse to the plaintiff.

And that plaintiff have such other and further relief as to this court may seem meet and equitable in the premises, and that plaintiff recover his costs herein incurred.

BISTLINE & BISTLINE,
Attorneys for Plaintiff.

State of Idaho,
County of Bannock—ss.

Fred D. Hilliard, being first duly sworn, deposes and says: That he is the above-named plaintiff; that he has read the foregoing complaint, knows the contents thereof, and believes the facts therein stated to be true.

/s/ FRED D. HILLIARD.

Subscribed and sworn to before me this 28th day of November, 1949.

/s/ F. M. BISTLINE,
Notary Public, Pocatello,
Idaho.

[Endorsed]: Filed December 10, 1949.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now the defendant and for answer to plaintiff's amended complaint, admits, denies and alleges:

I.

This defendant admits Paragraphs I and II of said complaint.

II.

Defendant admits that the record title to the real estate described in Paragraph III of plaintiff's complaint shows Jesse M. Chase, Inc., as the owner in fee of the same, but alleges that the said corporation is not in truth and in fact, the owner of said real estate, but that the same is owned by Jesse M. Chase an individual, and if not owned by said Jesse M. Chase, is held in trust by the said corporation for the payment of the debts of Jesse M. Chase, and especially for the payment of a judgment recovered by Louise B. Musselman Sisil in the above-entitled cause in an action wherein she was plaintiff and Jesse M. Chase defendant and in which a judgment was entered in her favor in the sum of \$10,-330.73, and alleges that the real estate in said paragraph III described, is subject to the lien of said judgment.

III.

Defendant admits all of Paragraph IV of said Amended Complaint, except that defendant denies that her claim, which is adverse to the plaintiff's claim is without right, or inferior to the claim of the plaintiff and alleges that it is superior thereto.

Further Answering Said Amended Complaint and
as a Complete and Affirmative Defense Thereto,
the Defendant Alleges:

I.

That Jesse M. Chase, Inc., a corporation as referred to in plaintiff's complaint was organized by Jesse M. Chase, an individual, solely for his own benefit; that said corporation was operated by dummy directors in the employ of Jesse M. Chase and who acted under his supervision and direction; that the said Jesse M. Chase transferred all of his assets that were liable for and should have been used for the payment of this defendant's claim and judgment to said Jesse M. Chase, Inc., a corporation, without any consideration whatever except for the issuance of corporate stock and that Jesse M. Chase, for all legal intents and purposes, was the owner of all of the stock issued by said corporation; that said corporation assumed the payment of certain Investors Certificates outstanding and signed by Jesse M. Chase, an individual, and agreed to pay the same; that the defendant herein was the owner of such Investors Certificates and the judgment heretofore referred to was rendered in her favor in a suit upon such certificates; that the transfer of the property of Jesse M. Chase to said corporation was in fraud of this creditor and of creditors generally, and that said corporation was fully advised of and knew all of the facts and circumstances surrounding the purchase of Investors Certificates but this defendant and her then hus-

band, Wm. H. Musselman, and that the proceeds of said certificates and the money paid by this defendant and her then husband, went into and became a part of the assets of Jesse M. Chase, Inc., with the full knowledge of all of the officers of said corporation, which was entirely owned and controlled by Jesse M. Chase, an individual; that said corporation took and accepted the real estate described in plaintiff's complaint, as trustee for the benefit of this defendant and that defendant's judgment against Jesse M. Chase is a valid lien upon the real estate in plaintiff's complaint referred to.

Wherefore, defendant prays that plaintiff's complaint be dismissed and that this court determine and enter its decree to the effect that defendant's judgment is a valid lien upon the real estate in plaintiff's complaint described and for such other and further relief as may seem just and proper in the premises, and that defendant recover all of her costs herein incurred.

/s/ B. W. DAVIS,

Attorney for Defendant.

State of Idaho,
County of Bannock—ss.

B. W. Davis, being first duly sworn upon his oath, deposes and says:

That he is the attorney for the defendant in the above-entitled cause; that he makes this verification for and on behalf of the defendant for the reason that she is absent from and lives outside of the

State of Idaho, the place where Affiant has his residence and office. That he is familiar and acquainted with the facts set forth in the above and foregoing answer and that the facts therein stated are true as he believes.

/s/ B. W. DAVIS.

Subscribed and sworn to before me this 12th day of December, 1949.

[Seal] /s/ LAURA S. GOUGH,
Notary Public.

Service admitted.

[Endorsed]: Filed December 13, 1949.

[Title of District Court and Cause.]

AMENDED ANSWER TO AMENDED
COMPLAINT

Comes now the defendant and by leave of Court granted at the close of the presentation of evidence by the parties on the trial hereof and files this, her Amended Answer and separate affirmative defense to conform to the proof submitted.

I.

This defendant admits Paragraphs I and II of said complaint.

II.

Defendant admits that the record title to the real estate described in Paragraph III of plaintiff's

complaint shows Jesse M. Chase, Inc., as the owner in fee of the same, but alleges that the said corporation is not in truth and in fact, the owner of said real estate, but that the same is owned by Jesse M. Chase an individual, and if not owned by said Jesse M. Chase, is held in trust by the said corporation for the payment of the debts of Jesse M. Chase, and especially for the payment of a judgment recovered by Louise B. Musselman Sisil in the above-entitled cause in an action wherein she was plaintiff and Jesse M. Chase defendant and in which a judgment was entered in her favor in the sum of \$10,-330.73, and alleges that the real estate in said paragraph III described, is subject to the lien of said judgment.

III.

Defendant admits all of Paragraph IV of said Amended Complaint, except that defendant denies that her claim, which is adverse to the plaintiff's claim is without right, or inferior to the claim of the plaintiff and alleges that it is superior thereto.

Further Answering Said Amended Complaint and as a Complete and Affirmative Defense Thereto, the Defendant Alleges:

I.

That Jesse M. Chase, Inc., a corporation as referred to in plaintiff's complaint was organized by Jesse M. Chase, an individual, solely for his own benefit; that said corporation was operated by dummy directors in the employ of Jesse M. Chase

and who acted under his supervision and direction that the said Jesse M. Chase transferred all of his assets that were liable for and should have been used for the payment of this defendant's claim and judgment to said Jesse M. Chase, Inc., a corporation without any consideration whatever except for the issuance of corporate stock and that Jesse M. Chase for all legal intents and purposes, was the owner of all of the stock issued by said corporation; that said corporation assumed the payment of certain Investors Certificates outstanding and signed by Jesse M. Chase, an individual, and agreed to pay the same; that the defendant herein was the owner of such Investors Certificates and the judgment heretofore referred to was rendered in her favor in a suit upon such certificates; that the transfer of the property of Jesse M. Chase to said corporation was in fraud of this creditor and of creditors generally, and that said corporation was fully advised of and knew all of the facts and circumstances surrounding the purchase of Investors certificates but this defendant and her then husband, Wm. H. Musselman, and that the proceeds of said certificates and the money paid by this defendant and her then husband, went into and became a part of the assets of Jesse M. Chase, Inc., with the full knowledge of all of the officers of said corporation, which was entirely owned and controlled by Jesse M. Chase, an individual; that said corporation took and accepted the real estate described in plaintiff's complaint, as trustee for the benefit of this defendant and that defendant's judgment against Jesse M.

Chase is a valid lien upon the real estate in plaintiff's complaint referred to.

Further Answering Said Amended Complaint and as a Second and Complete Affirmative Defense Thereto, This Defendant Alleges

I.

That the plaintiff herein, subsequent to the filing of his amended complaint and subsequent to the sale of the real estate described in plaintiff's said complaint, the U. S. Marshal selling under an execution issued on behalf of defendant herein in the case of Louise B. Musselman Sisil vs. Jesse M. Chase, on a judgment entered in the above-entitled court in case No. 1539, accepted and secured from Jesse M. Chase, a conveyance of the premises and an assignment of his right to redemption, and duly redeemed from the execution sale and is now estopped to deny the validity of this defendant's claim under said execution and is estopped to question her right or interest in and to the premises described in plaintiff's complaint.

II.

That the plaintiff herein, as receiver of Jesse M. Chase, Inc., has and can have no greater right in and to the real estate described in his complaint than the said Jesse M. Chase, Inc., had in and to said real estate by reason of a transfer to said purported corporation from Jesse M. Chase an individual; that Jesse M. Chase as President of Jesse M. Chase, Inc., had full knowledge and notice of all

matters and things in connection with Case No. 1539 as heretofore referred to, pending in the above entitled court, and notice to said Jesse M. Chase was full and complete notice to said corporation in all matters and things connected therewith.

Further Answering Said Complaint and as a Counter Claim and Cross-Demand Against the Said Plaintiff, the Defendant Alleges:

I.

That the said Jesse M. Chase and Jesse M. Chase, Inc., at all times herein mentioned, were and now are one and the same person or concern. That the judgment heretofore entered in favor of Louise B. Musselman Sisil in that certain action wherein she was plaintiff and Jesse M. Chase was defendant, being case 1539 in the above-entitled court, is *res adjudicata* as to the plaintiff herein as Receiver of Jesse M. Chase, Inc., and as to Jesse M. Chase, Inc., and that said judgment was both in law and in fact, a judgment against Jesse M. Chase, Inc., which purported corporation held any property assigned, transferred or sold to it by Jesse M. Chase, an individual, in trust for Louise B. Musselman Sisil by reason of the fraudulent transfer thereof and by reason of the failure of the said Jesse M. Chase and Jesse M. Chase, Inc., to comply with the Bulk Sales Act of the State of Idaho.

II.

That the judgment in favor of Louise B. Musselman Sisil as aforesaid is a judgment and should be

declared to be a judgment against the assets of both Jesse M. Chase and Jesse M. Chase, Inc., and is a judgment that should be and this defendant in this cross-demand or counter claim, asks that it be declared a judgment against Jesse M. Chase, Inc., as of the date of the entry of the same, and also asks that the purported sale from Jesse M. Chase an individual to Jesse M. Chase, Inc., be held and declared to be a fraud upon Louise B. Musselman Sisil.

III.

And Louise B. Musselman Sisil alleges that she is entitled to a judgment and decree directing the said plaintiff herein to make payment of any balance due upon her judgment as aforesaid in the same manner as any and all other judgments heretofore entered against Jesse M. Chase, Inc., have been paid.

Wherefore, Defendant prays that the plaintiff's complaint be dismissed and that this court allow and enter its decree to the effect that defendant's judgment was at all times herein mentioned, a valid lien upon the real estate in plaintiff's complaint described and that this court adjudge and decree that said judgment is a valid claim and judgment as of the date thereof against any and all assets and property standing in the name of either Jesse M. Chase an individual or Jesse M. Chase, Inc., and that said judgment be declared to be in law and in fact a judgment against Jesse M. Chase, Inc., and that the said Receiver, plaintiff herein, be required to recog-

nize and pay said judgment the same as any and all other judgments against Jesse M. Chase, Inc., have been recognized and paid and defendant and cross-demandant prays for such other and further relief as may seem just and proper in the premises and that she recover all of her costs herein incurred.

B. W. DAVIS,

Attorney for Defendant.

Service admitted.

[Endorsed]: Filed May 22, 1950.

[Title of District Court and Cause.]

MEMORANDUM

The defendant Louise B. Musselman Sisil, was the owner and holder of certain investment certificates signed and executed by Jesse M. Chase as an individual, issued during the year 1945. Mrs. Sisil brought an action in this Court against Jesse M. Chase on these investment certificates and on October 1, 1949, obtained judgment for \$10,330.73; on October 15, 1949, she caused to be filed a transcript of said judgment in the County Recorder's office in Bannock County, Idaho. It is by virtue of this judgment and the subsequent filing of the transcript that she claims a lien which is the subject matter of this suit.

The Plaintiff is the duly appointed Receiver of Jesse M. Chase, Inc., and seeks by this action a

decree declaring and adjudging that plaintiff is the owner in fee simple of the real estate on which levy of execution was made and that defendant has no estate, right, title or interest in the property; and further that the defendant be forever enjoined and debarred from asserting any right, title, interest, claim or estate in the property, adverse to the plaintiff.

Jesse M. Chase was engaged in the used car business; his operations were very extensive; in these operations he issued several hundred thousand dollars in investment certificates such as the certificates held by the defendant in this case. While these certificates were outstanding he transferred his entire assets and business to Jesse M. Chase, Inc. Outside of a few of his employees, which he used in order to comply with the corporation laws, he was the owner of the business. The corporation was at most, a mere alter ego of its owner. Jesse M. Chase was continuing in business, but under the name of Jesse M. Chase Inc., and from the facts that were brought to light in the evidence in this case it appears that he was deeply involved, principally by the issuance and sale of these investment certificates and on this account formed a corporation and deeded his property to it and then was instrumental in having the corporation placed in the hands of a Receiver.

The Court is convinced that all these transactions were made for only one purpose and that was to hinder and delay this defendant and others from enforcing their claims. *Shapiro v. Wilgus et al., Receivers.* 287 U. S. 348.

The fact that the plaintiff here is the Receiver—considering the facts that lead up to his appointment, places him in no better position than if Jesse M. Chase or Jesse M. Chase, Inc., was the plaintiff and he is subject to the maxim “he who comes into equity must come with clean hands.”

The Court is of the opinion that the judgment entered for the defendant in case No. 1539 in this Court, Louise B. Musselman Sisil v. Jesse M. Chase, is a valid lien upon the real estate here involved and that she is entitled either to payment of her judgment or enforcement of her lien.

Counsel for the defendant will prepare the necessary findings of fact, conclusions of law and judgment and will serve copy on opposing counsel and submit the originals to the Court for approval.

Dated August 2, 1950.

Clark: District Judge.

[Endorsed]: Filed August 2, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having heretofore been submitted to the court without a jury by agreement of counsel for the respective parties, upon issues framed by the plaintiff's amended complaint and the amended answer to the amended complaint and the counter claim and cross-demand of the defend-

ant against the plaintiff; the said amended answer to the amended complaint and the counter claim and cross-demand having been filed by leave of court upon application made by counsel for defendant during the trial of said cause and evidence, both oral and documentary, having been submitted on behalf of plaintiff and defendant and written briefs having been prepared and filed by the respective parties, and the Court having carefully considered said briefs and evidence in said cause and having heretofore, on the 2nd day of August, 1950, made and filed its written memorandum or opinion, the Court now makes the following:

Findings of Fact

I.

That at the time of the filing of plaintiff's Amended Complaint, the said Fred D. Hilliard was the duly appointed, qualified and acting receiver of Jesse M. Chase, Inc., a corporation by virtue of an order of the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County in an action entitled "J. A. Youngren, plaintiff vs. Jesse M. Chase, Inc., a corporation," made on the 5th day of November, 1949; that the said Receiver filed his oath of office and gave bond as required by order of appointment; that thereafter Donald Burnett was appointed Receiver in place and instead of the said Fred D. Hilliard and is now the duly appointed and qualified and acting Receiver of Jesse M. Chase, Inc., a corporation.

II.

That at the time of the commencement of plaintiff's action, and prior thereto, Jesse M. Chase, Inc., was a corporation organized and existing under and by virtue of the laws of the State of Idaho with its principal place of business at Pocatello, Bannock County, Idaho.

III.

That at the time of the appointment of a receiver for Jesse M. Chase, Inc., a corporation, the records in the office of the County Recorder of Bannock County, Idaho, showed said corporation to be the record title owner of the following described real estate, to wit:

Lots 6 and 7 in Block 267, North 25' of Lot 15 and all of Lot 16 in Block 235, Lots 17, 18, 19 and 20 inclusive in Block 235, all in Pocatello Townsite, Bannock County, Idaho, according to the Official Plat of the Survey of said lands returned to the General Land Office by the Surveyor General;

That the said corporation derived any title to said real estate from and by virtue of a warranty deed executed by Jesse M. Chase and wife, conveying said real estate to said corporation; that said deed was without any consideration and was in fraud of the rights of Louise B. Musselman Sisil, the defendant and cross-demandant herein.

IV.

That the transfer or attempted transfer by Jesse M. Chase and wife to the said Jesse M. Chase, Inc.,

a corporation, of the real estate hereinbefore and in plaintiff's amended complaint described, was without any consideration and was ineffectual insofar as the rights of the said defendant were and are concerned and that the said real estate and the proceeds from any sale thereof, or the proceeds of any moneys held in trust by reason of any sale of said real estate, was and is held in trust for the payment of a certain judgment received by Louise B. Musselman Sisil in an action entitled: "In the District Court of the United States in and for the District of Idaho, Eastern Division, Louise B. Musselman Sisil, plaintiff and Jesse M. Chase, defendant, Case No. 1539," in which judgment was entered in favor of the said Louise B. Musselman Sisil in the amount of \$10,330.73, said judgment having been entered on the 1st day of October, 1949, and prior to the appointment of a Receiver for Jesse M. Chase, Inc., a corporation.

V.

That at the time of the incorporation of Jesse M. Chase, Inc., Jesse M. Chase, an individual was indebted to the defendant and her then husband, upon certain promissory notes or Investment Certificates which were reduced to judgment by the defendant in case No. 1539 as hereinabove referred to; that the said corporation was organized solely for the benefit of the said Jesse M. Chase; that he was, for all practical purposes the sole and only owner of all of the corporate stock of said corporation, having used the names of a few of his employees in the incorporation of Jesse M. Chase, Inc., solely in

order to comply with the corporation laws of the State of Idaho and there was no consideration for the transfer of the assets of Jesse M. Chase, an individual to Jesse M. Chase, Inc., a corporation, and that insofar as the rights of Jesse M. Chase, Inc., and of the defendant herein were concerned, the said Jesse M. Chase remained the owner of the assets transferred to Jesse M. Chase, Inc., and the said corporation held the assets in trust for the payment of the defendant's claim.

VI.

That at the time of the incorporation of Jesse M. Chase, Inc., the said corporation expressly assumed the payment of the "Investors Certificates" then outstanding and signed by Jesse M. Chase, an individual and agreed to pay the same; that the defendant herein and her now deceased husband, at the time of said incorporation and at the time of the issuance of the corporate stock to Jesse M. Chase, an individual and at the time of the assumption by the corporation of the payment of said "Investors Certificates," was the owner of certain "Investors Certificates" as reduced to judgment in Case No. 1539; that the transfer of all of the assets of Jesse M. Chase used in and about the used car business operated by him, to said corporation in exchange for corporate stock, issued to said Jesse M. Chase, was a fraud upon the defendant herein, and that said corporation, of which Jesse M. Chase was the president, manager and sole director, was fully advised and knew all of the facts and circumstances sur-

grounding the purchase of "Investors Certificates" by the defendant, Louise B. Musselman Sisil and her then husband, William H. Musselman and that the said corporation knew that the proceeds received by Jesse M. Chase from the sale of said "Investors Certificates" to the defendant and her then husband, had come into and become a part of the assets of Jesse M. Chase, Inc.; that said Jesse M. Chase, Inc., took and accepted the real estate described in plaintiff's Amended Complaint and all of the assets, real and personal, transferred to it by Jesse M. Chase, an individual as Trustee for the benefit of this defendant, and that the defendant's judgment against Jesse M. Chase in case No. 1539, upon its entry, was and is a valid lien upon the real estate in plaintiff's amended complaint referred to.

VII.

That the said Jesse M. Chase, an individual was the moving party in the appointment of a receiver for Jesse M. Chase, Inc., a corporation; that he actively participated in securing the appointment of a receiver, appeared by counsel in the District Court of Bannock County, in and for the Fifth Judicial District of the State of Idaho, urging the appointment of a Receiver for said corporation; that the corporation did not file any answer or denial to the allegations in the complaint of J. A. Youngren, asking for a Receiver and that a Receiver was desired by the said Jesse M. Chase for the purpose of placing the assets of the said Jesse M. Chase trans-

ferred to said corporation out of reach of defendant herein.

VIII.

That the said Jesse M. Chase, at the time of the transfer of all of the assets, both personal and real, of his used car business to Jesse M. Chase, Inc., gave no notice of said transfer to the defendant herein as a creditor, and made no attempt or effort to comply with the Bulk Sales Act of the State of Idaho.

IX.

That the judgment heretofore rendered in favor of Louise B. Musselman Sisil in case No. 1539 as afore-mentioned, at the time of its entry and rendition, was in fact, a judgment against the assets of both Jesse M. Chase and Jesse M. Chase, Inc., as of the date of the sale thereof.

X.

That the said plaintiff herein, the Receiver of Jesse M. Chase, Inc., took over and accepted the real estate described in plaintiff's amended complaint, and took over and accepted any and all other assets of the said corporation, subject to the judgment of Louise B. Musselman Sisil, and against Jesse M. Chase, an individual as aforesaid, and that Louise B. Musselman Sisil is entitled to a judgment and decree directing the plaintiff to make payment of any balance due upon her judgment as aforesaid, in the same manner as any and all other judgments entered against Jesse M. Chase, Inc., have been paid by said Receiver.

XI.

That the defendant, Louise B. Musselman Sisil, on the 15th day of October, 1949, caused to be filed and recorded with the County Recorder of Bannock County, Idaho, an abstract of judgment from the U. S. District Court for the District of Idaho, showing the entry of a certain judgment in favor of Louise B. Musselman Sisil as judgment creditor against Jesse M. Chase, judgment debtor, on the 1st day of October, 1949, in the amount of \$10,-307.13 principal and costs in the amount of \$23.60 as appeared in Volume 4 at Page 453 in Case No. 1539 on the Judgment Docket of said Federal Court; that upon the filing and recording of said abstract of Judgment, the same became and was a lien upon all of the assets of Jesse M. Chase, Inc., a corporation in accordance with the laws of the State of Idaho.

XII.

That the plaintiff herein, subsequent to the rendition and entry of the judgment in favor of Louise B. Musselman Sisil and against Jesse M. Chase in Case 1539 as aforesaid and subsequent to the filing and recording of an abstract of said judgment in the office of the County Recorder of Bannock County, Idaho, sold the real estate described in plaintiff's amended complaint.

Conclusions of Law

I.

That the plaintiff has failed to prove and establish the material allegations of his Amended Complaint

and is not entitled to any judgment against the defendant.

II.

That the defendant has established and proven the material allegations of her Answer and Cross-Demand and is entitled to judgment as prayed for by her.

III.

That the judgment and claim of the defendant against Jesse M. Chase an individual as heretofore referred to in the Findings of Fact and as set forth in the pleadings of the parties, is a valid claim against the plaintiff as Receiver of Jesse M. Chase, Inc., and that the right, title and interest of the defendant as claimed by her, in, to and against the real estate described in Paragraph III of Plaintiff's Amended Complaint is superior to the right of the said plaintiff as receiver and is a valid lien upon the said real estate.

IV.

That all of the assets, real and personal and the real estate described in plaintiff's amended complaint, transferred by Jesse M. Chase an individual to Jesse M. Chase, Inc., was in fraud of the rights of Louise B. Musselman Sisil and was of no legal effect insofar as her claim against Jesse M. Chase is and was concerned and that the said real estate described in said Amended Complaint and all other assets of Jesse M. Chase, Inc., received from Jesse M. Chase an individual by reason of transfer thereof, were and are held in trust by the said plaintiff herein, and by Jesse M. Chase, Inc., a corporation, for the benefit of Louise B. Musselman Sisil.

V.

That the judgment entered in that certain case entitled:

“In the District Court of the United States, in and for the District of Idaho, Eastern Division, Louise B. Musselman Sisil, Plaintiff, vs. Jesse M. Chase, Defendant, Case 1539” at the time of its entry, and ever since said time, has been a valid judgment against the real estate described in plaintiff’s amended complaint and against the assets of Jesse M. Chase, Inc., a corporation.

VI.

That the defendant and cross-demandant is entitled to a judgment directing the plaintiff herein as receiver, to pay to the defendant, the balance due upon her judgment against Jesse M. Chase out of any funds set aside or held in trust for said purpose or out of any funds received from the sale by the said plaintiff and receiver, of the real estate described in plaintiff’s amended complaint or out of the sale of any other of the assets of Jesse M. Chase, Inc., in the same manner and on the same basis as other judgments have been paid by said receiver that were recovered against Jesse M. Chase, Inc., a corporation or Jesse M. Chase.

Dated this 18th day of August, 1950.

/s/ CHASE A. CLARK,

Federal District Judge.

[Endorsed]: Filed August 18, 1950.

In the United States District Court, for the District
of Idaho, Eastern Division

No. 1592

FRED D. HILLIARD, Receiver of JESSE M.
CHASE, INC., a Corporation,
Plaintiff,

vs.

LOUISE B. MUSSELMAN SISIL,
Defendant.

JUDGMENT

The above-entitled cause having been tried and submitted to the court sitting without a jury, by agreement of counsel for the respective parties upon the issues framed by plaintiff's Amended Complaint and the Amended Answer of the defendant to said Amended Complaint and the Cross-Demand of the defendant, the plaintiff appearing in person and by his counsel, F. M. Bistline, and the defendant appearing in person and by her counsel, B. W. Davis, and plaintiff and defendant having introduced evidence, both oral and documentary, and the court having taken the matter under advisement and having carefully considered the evidence and the written briefs submitted by the respective parties in support of their contentions and the court having heretofore filed and entered a written opinion and made and filed Findings of Fact and Conclusions of Law:

It Is Ordered, Adjudged and Decreed that the plaintiff take nothing by reason of his complaint and that the judgment of Louise B. Musselman Sisil, in the amount of \$10,330.73, or any balance due thereon, the same being that certain judgment made and entered in the Federal District Court of the United States in and for the District of Idaho, Eastern Division in that certain case in which Louise B. Musselman Sisil was plaintiff and Jesse M. Chase, defendant, being Case 1539, said judgment having been signed on the 1st day of October, 1949, is a valid judgment and a lien upon the following described real estate:

Lots 6 and 7 in Block 267, North 25' of Lot 15 and all of Lot 16 in Block 235, Lots 17, 18, 19 and 20 inclusive in Block 235, all in Pocatello Townsite, Bannock County, Idaho, according to the Official Plat of the Survey of said Lands returned to the General Land Office by the Surveyor General,

and that the defendant is entitled either to the payment of her said judgment or an enforcement of her lien as against said real estate.

It Is Further Ordered, Adjudged and Decreed that the defendant herein, having filed a counter claim or cross-demand against the plaintiff, that she is entitled to judgment in accordance with said Cross-Demand that the plaintiff herein or the receiver of Jesse M. Chase, Inc., should be compelled and is hereby ordered to satisfy the judgment

of Louise B. Musselman Sisil as hereinabove referred to, in the same manner as any and all other judgments have been paid and satisfied by him, whether the same have been judgments against Jesse M. Chase, Inc., or Jesse M. Chase, an individual, and

It is Further Ordered, Adjudged and Decreed, that the judgment of Louise B. Musselman Sisil in Case 1539 as aforesaid, is a valid judgment against any and all funds received by said Receiver from the sale of the real estate heretofore described and is a judgment against any funds held in trust by the Receiver or others for the purpose of protecting the title to the said real estate as against the lien or claim of Louise B. Musselman Sisil.

That the Judgment entered in favor of Louise B. Musselman Sisil against Jesse M. Chase in Case 1539 in the United States District Court of the District of Idaho, Eastern Division as shown by an Abstract and Transcript of the same filed in the office of the County Recorder of Bannock County, Idaho on October 15, 1949, when said Abstract of Judgment was filed, became a valid lien against all of the assets of Jesse M. Chase, Inc., a corporation in accordance with the laws of the State of Idaho with reference to the liens of judgment creditors, and

It Is Further Ordered, Adjudged and Decreed that the judgment entered in said case No. 1539 in favor of Louise B. Musselman Sisil and against Jesse M. Chase on the 1st day of October, 1949, in the total amount of \$10,330.73, was a judgment

against and became a judgment against Jesse M. Chase, Inc., a corporation upon the signing of the same and the said Judgment is hereby ordered and declared to be a valid judgment against all of the assets standing in the name of Jesse M. Chase, Inc., a corporation as of the 1st day of October, 1949.

It Is Further Ordered that the defendant recover her costs herein expended, to be taxed by the Clerk in the sum of \$64.10.

Dated this 18th day of August, 1950.

/s/ CHASE A. CLARK,
Federal District Judge.

[Endorsed]: Filed August 18, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Fred D. Hilliard, Receiver of Jesse M. Chase, Inc., a corporation, the plaintiff above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on August 18, 1950.

/s/ F. M. BISTLINE,
/s/ R. DON BISTLINE,
Attorneys for Appellant.

[Endorsed]: Filed September 12, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The above-named plaintiff and appellant designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Amended Complaint.
2. Answer and amendments thereto.
3. Entire Transcript of the evidence taken at the trial.
4. Memorandum Decision.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Notice of Appeal.
8. This designation.

A Copy of the entire transcript of the evidence as referred to in number three above, and a copy of the proceedings stenographically reported, as referred to herein, will be served and filed as soon as such transcript or transcripts, are completed by the reporter.

/s/ F. M. BISTLINE,

/s/ R. DON BISTLINE,

Attorneys for Appellant.

Service Admitted.

[Endorsed]: Filed October 19, 1950.

[Title of District Court and Cause.]

ORDER

Good cause appearing therefore,

It Is Ordered that the time within which the record on appeal may be filed and the appeal docketed in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is extended to December 12, 1950.

Dated this 11th day of October 1950.

/s/ CHASE A. CLARK,

United States District Judge.

[Endorsed]: Filed October 12, 1950.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that all exhibits may be sent to the appellate court in lieu of copies and that the District Court may make such order therefor, and for the safekeeping, transportation and return thereof as it deems proper.

/s/ F. M. BISTLINE,

/s/ R. DON BISTLINE,

Attorneys for Plaintiff and
Appellant.

/s/ B. W. DAVIS,

Attorney for Defendant and
Respondent.

[Endorsed]: Filed November 8, 1950.

In the United States District Court, for the District
Of Idaho, Eastern Division

No. 1592

FRED D. HILLIARD, Receiver of JESSE M.
CHASE, INC., a Corporation,

Plaintiff,

vs.

LOUISE B. MUSSELMAN SISIL,

Defendant.

TRANSCRIPT OF PROCEEDINGS

This matter was tried before the Honorable Chase
A. Clark, United States District Judge, sitting with-
out a jury at Pocatello, Idaho, on May 2nd, 1950.

Appearances:

F. M. BISTLINE, Esq.,

Pocatello, Idaho,

Attorney for the Plaintiff.

BEN W. DAVIS, Esq.,

Pocatello, Idaho,

Attorney for the Defendant.

May 2nd, 1950, 10:00 o'clock A.M.

The Court: Are you Gentlemen ready to proceed?

Mr. Bistline: The Plaintiff is ready.

Mr. Davis: The Defendant is ready.

Mr. Bistline: I wonder if the Court would like
me to make a statement as to the issues here?

The Court: I think, Mr. Bistline, I am quite familiar with the issues in this matter, and I think it will be just as well to go right ahead with your testimony.

Mr. Davis: If the Court please, it might save some time—on yesterday, Mr. Bistline gave me this abstract; I have examined it and I don't want to object just to be making objections, but it may be possible that later I will want to object.

The Court: That I would suggest that in order that the matter may go in in an orderly fashion, that possibly these exhibits, whatever Mr. Bistline has to offer, should be marked and offered.

Mr. Bistline: We have had the exhibits marked, however, we will go ahead with our offers now.

The Court: Very well, you may do so.

Mr. Bistline: The Plaintiff offers in evidence Plaintiff's proposed Exhibit No. 1 which is a proofed copy, it has been proof read and certified, as the [1*] articles of incorporation of Jesse M. Chase, Incorporated, a corporation.

Mr. Davis: Have there been any amendments to those articles?

Mr. Bistline: I propose to ask Mr. Chase about that.

Mr. Davis: If something should develop in regard to this I am sure the Court would permit me to make a motion to strike or to have my objection.

The Court: I will admit this subject to your right, Mr. Davis, to make a motion to strike.

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

JESSE M. CHASE

called as a witness by the Plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Bistline:

Q. I believe you gave your name as Jesse M. Chase? A. Yes, sir.

Q. Will you please refer to the paper you have in your hand, which is a certified copy of the articles of incorporation of Jesse M. Chase, Incorporated, and state what position you held with that corporation? A. I am President of the corporation.

Q. How long have you been President? [2]

A. Since its organization.

Q. Has there been any amendments to the articles of incorporation since they were filed in 1947?

A. No.

Mr. Bistline: Plaintiff now offers in evidence proposed exhibit No. 2, which is a copy of an order appointing a Receiver.

Mr. Davis: Is that a correct copy, Mr. Bistline?

Mr. Bistline: Yes, it is.

Mr. Davis: Then I have no objection.

The Court: Then it may be admitted.

Mr. Bistline: Plaintiff now offers proposed exhibit No. 3, being a certified copy of a warranty deed, certified to by Anna Keefe, Clerk of the District Court and Ex-Officio Auditor and Recorder of Bannock County, Idaho; this instrument is recorded in Book 98 of Deeds at page 438 of the records of Bannock County, State of Idaho, on February 12,

(Testimony of Jesse M. Chase.)

1947, wherein Jesse M. Chase and Edith A. Chase—husband and wife—are Grantees, and Jesse M. Chase, Incorporated, is the Grantee, which describes the property involved in this action.

Mr. Davis: I have no objection to its being a certified copy, but I do object on the ground [3] that no proper foundation has been laid and by our answer we denied any consideration for the deed, or that there was any consideration; it has not as yet been established.

The Court: It may be admitted at this time subject to the objection and, of course, subject to be connected up in regard to the questions that you raised in your objection. If that is not done, of course it will be subject to your motion to strike.

Mr. Bistline: The Plaintiff at this time offers Plaintiff's proposed exhibit No. 4 which is a supplemental abstract of title to the property involved in this action, subsequent to the recording of the deed which has been admitted in evidence as exhibit No. 3.

Mr. Davis: I have no objection to this. I agreed with counsel that it was not necessary to furnish all of the abstracts and that this could be introduced, this abstract only subsequent to the time of the deed.

The Court: Then it may be admitted.

Mr. Bistline: I have no further questions.

Mr. Davis: I don't believe I have any questions of this witness at this time.

Mr. Bistline: The Plaintiff rests. [4]

Mr. Davis: I move that exhibit No. 3 offered in evidence and admitted subject to my objection be stricken at this time, the legal effect of the deed, and

(Testimony of Jesse M. Chase.)

the consideration therefor having been denied in the answer, and I move that judgment be entered for the Defendant; the Plaintiff has wholly failed to show himself entitled to any relief, he stands in the shoes of the corporation. They have put the President of the corporation on the stand and I do not feel that they have established their case. I do not feel that exhibit No. 3 is entitled to remain in evidence.

The Court: Your motion will be denied at this time, Mr. Davis.

Mr. Davis: We would like to call Mr. Burnett for cross-examination.

The Court: Very well.

DONALD L. BURNETT

being called as a witness by the Defendant, for cross-examination, after being first duly sworn, testifies as follows:

Cross-Examination

By Mr. Davis:

Q. You are the present Receiver for Jesse M. Chase, Incorporated?

A. Yes, sir, that is correct.

Q. It is your position that the judgment that was entered [5] in favor of Mrs. Sisil against Jesse M. Chase in this Court is not a judgment against the corporation, and is not a lien on any of the corporation's assets?

A. That is correct.

Q. And you in this action are representing Jesse M. Chase, Incorporated?

A. That is correct.

Mr. Bistline: I don't want to make a trivial objection, but I think his capacity is shown.

(Testimony of Donald L. Burnett.)

The Court: I think he has a right to ask these questions on his cross-examination.

Q. In February of this year, after this present action had been commenced against Mrs. Sisil you made an application in the District Court of Bannock County, Idaho, as Receiver for authority to redeem from the United States Marshal's sale under execution issued in the Federal Court?

A. That is correct.

Q. And you received an order of the District Court without any reservation authorizing you to redeem on behalf of Jesse M. Chase on that sale?

A. Yes, sir.

Q. You did redeem from that sale and paid the amount that the property had been sold for, did you not? [6]

A. That is correct.

Q. I am speaking now of the present action, the one we are trying today, this action was brought when Mr. Hilliard was Receiver?

A. That is my understanding.

Q. Are you familiar with the original files in this District Court in Bannock County?

A. I reviewed it in a summary form, however, I am not familiar to the extent that Mr. Bistline is.

Q. Showing you the original Court files, the action was originally brought as "Fred D. Hilliard, Receiver, and against Mrs. Sisil and Everett M. Evans, United States Marshal"?

A. That appears to be correct.

Q. It was brought for the purpose of restraining

(Testimony of Donald L. Burnett.)

the United States Marshal from proceeding with the sale? A. I believe that is correct.

Q. And the matter was tried in the District Court, and the District Judge refused to enjoin Mr. Evans, the United States Marshal, from the sale?

A. That is correct.

Q. Your counsel amended that action, or filed an amended complaint dropping Mr. Evans, the Marshal from it and filed an amended complaint and served it on Mrs. Sisil, and that is the action we are trying now? [7] A. That is correct.

Q. You, as Receiver, under order took over all of the assets of Jesse M. Chase, Incorporated?

A. That is correct.

Q. You do not have the ledger sheets for 1947, when Mr. Chase formed this corporation?

A. What do you refer to?

Q. Do you have any ledger sheets or books showing the assets of the corporation in 1947, when it was organized? A. Yes, sir.

Q. Where are those?

A. We have an exhibit, I refer to it not in a legal sense, we have the financial statement of the corporation as of December 1st, 1946, the corporation was formed on January 1st, 1947.

Q. That is the financial statement of Jesse M. Chase individually? A. That is correct.

Q. And the assets of Jesse M. Chase individually were transferred to Jesse M. Chase, Incorporated, about the first of January?

(Testimony of Donald L. Burnett.)

A. That is correct.

Q. And Mr. Chase received for that corporate stock? A. That is correct. [8]

Q. You are familiar with the book of corporate stock? A. I have reviewed it.

Q. It is a fact is it not that there never were but five stockholders—holders of common stock in the corporation?

A. I would have to refer to the book for information on that, I cannot recall from memory.

Q. Could you recall from the corporate stock book?

A. Do you have the other file that I furnished you?

Q. Yes. A. That appears to be correct.

Q. Yes, there were five, they were Jesse M. Chase, W. R. Hubble, I. H. Nelson, W. G. Ash, and N. M. Anderson? A. That is correct.

Q. When you took possession as Receiver there were 1759 shares of the common stock of the corporation outstanding? A. Yes, sir.

Q. And 1716 of those shares belonged to Jesse M. Chase? A. That is what the record reflects.

Q. And 21 shares to W. R. Hubble?

A. Yes.

Q. You know that he was the General Manager for Jesse M. Chase? A. I was informed.

Q. You know that W. R. Hubble was in the employ of Jesse M. [9] Chase prior to this corporation being formed? A. I was informed.

Q. And you know that Mr. Nelson was the book-keeper for Jesse M. Chase at the time this corpora-

(Testimony of Donald L. Burnett.)

tion was formed? A. I was so informed.

Q. And you know that Mr. Ash was the general manager for Jesse M. Chase at the time the corporation was formed?

A. I am not familiar with those details.

Q. As to N. M. Anderson, you are familiar with the fact that he was an employe of Jesse M. Chase at the time of the forming of the corporation?

A. I don't know about Mr. Anderson.

Q. This stock book of the corporate stock shows that Mr. Chase at different times had issued to himself more shares of stock than he now holds?

A. I would have to review the record, I don't recall that from memory.

Q. Do the records indicate that Mr. Chase sold back some corporate stock?

A. I haven't reviewed the records to ascertain that.

Q. You know that the records show that Mr. Chase had more stock in this corporation from time to time than when you took it over?

A. I haven't gone over it to find that out. [10]

Q. Do you know whether the records show that he sold stock back?

A. My records as Receiver wouldn't show that; this would be a matter that I am not familiar with necessarily.

Q. The corporation was formed in 1947 and you took it over in 1949? A. December 21st, 1949.

Q. The Receiver was appointed on November 5th, 1949? A. That is right.

(Testimony of Donald L. Burnett.)

Q. You don't know how much stock he ever had in it? A. I cannot state from memory, no.

Q. From your examination of the records—I call your attention to stock certificate No. 19, that shows issued to Jesse M. Chase 19 shares and cancelled, can you explain that?

A. That took place prior to the appointment of a Receiver and I had no occasion to review that transaction.

Q. And that would be true of the different ones issued which show they are cancelled?

A. That is correct, the duty of the Receiver didn't require a review of the capital stock in prior years.

Mr. Davis: We offer in evidence Defendant's exhibit No. 5, being the corporate stock certificate book of the corporation. [11]

Mr. Bistline: I have no objection.

The Court: It may be admitted.

Q. Now, Mr. Burnett, do you know at the time Mr. Hilliard was originally appointed as Receiver that a notice of sale and publication of the notice of sale of the real estate here in question had already been made by the United States Marshal?

A. I was advised that there had been a United States Marshal's sale as it is commonly referred to.

Q. I am calling your attention to what is Exhibit "A" of your file, are you familiar with that?

A. Yes, sir.

Q. That exhibit contains a statement of the cor-

(Testimony of Donald L. Burnett.)

porate affairs as made up by Jesse M. Chase and given to Mr. Hilliard as Receiver?

A. That is my understanding.

Q. You have gone over it?

A. I am familiar with it.

Q. Then you know, do you not, that not only Mr. Chase as President but you as Receiver have always understood and always acknowledged that all investment certificates that he sold or issued prior to the incorporation of Jesse M. Chase, Incorporated, are valid claims against the corporation? [12]

A. It is my understanding that the corporation assumed liability for all outstanding liabilities at the time the corporation was formed.

Q. Such records as you have show that to be a fact?

A. That is what I stated, it was the intention of the corporation to assume all of the liabilities of the business formerly conducted by Jesse M. Chase as an individual.

Q. And you recognize that, and recognize that Mrs. Sisil has a valid claim against the corporation?

A. No, sir, I do not.

Q. You do not recognize that her judgment is a valid claim against the corporation?

A. Not as a judgment.

Q. You recognize that it is a claim?

A. I have been informed that she has a judgment against Jesse M. Chase as an individual; that she is a holder of a certificate.

Q. And that her judgment is on that certificate?

(Testimony of Donald L. Burnett.)

A. And that she has a certificate against Jesse M. Chase.

Q. You are aware of the fact that the corporation assumed liability of all these certificates?

A. For all outstanding liabilities.

Q. And that was an outstanding liability?

A. That is a matter of dispute and perhaps for some litigation [13] as to whether they are liabilities—all of the certificates—I am not aware of what they are.

Q. In this report of Jesse M. Chase, this exhibit "A" that you refer to, he lists the different certificate holders whose certificates were signed by Jesse M. Chase, individually, as being bona fide creditors of Jesse M. Chase, Incorporated?

A. They were so listed.

Q. And he listed in this statement the claim of Louise B. Musselman Sisil as having a judgment in the United States District Court, and listed that as a claim?

A. This particular sheet does not reflect any acknowledgment of liability, it reflects legal difficulties which are subject to litigation, and in no way recognizes the judgment but simply indicates that they are included in the list, there are difficulties there, matters subject to litigation but it does not recognize the correctness of them.

Q. You want that answer to stand?

A. That is my understanding, that it is a list of legal difficulties.

Q. He listed as one of the obligations a judgment

(Testimony of Donald L. Burnett.)

of the Intermountain Credit Association of some nine hundred and forty-four dollars?

A. That was a judgment against Jesse M. Chase, Inc. [14]

Q. He listed it under the same heading as he listed the Sisil judgment,—it is in the same class as the Louise B. Musselman Sisil judgment?

A. It is not. You refer to it as the same class, it is not in the same class except that it is a legal difficulty. It in no way says that it is the same type of judgment creditor. This is a list of legal difficulties we are referring to for consideration.

The Court: Let me see that, where does it say that,—I cannot find it, it does not say that.

Q. You paid a judgment listed in favor of the Intermountain Credit Men?

Mr. Bistline: We object to that as repetition.

The Court: He can ask these questions of this witness; it may be repetition but he must answer the questions.

Q. You paid that judgment?

A. That is a judgment against Jesse M. Chase, Inc.

Q. You paid other items that are listed in there, did you not?

A. There is a judgment of C. J. McAllister, which I recall payment of.

Mr. Davis: Now, Mr. Bistline, I believe you have a copy of the Receiver's report that was attached?

Mr. Bistline: Yes. [15]

(Testimony of Donald L. Burnett.)

Mr. Davis: We ask that this be marked; we now offer in evidence Defendant's exhibit No. 6 and exhibit No. 7,—Exhibit No. 7 is a report Mr. Hilliard as Receiver to which he attached Exhibit "A", which is now Exhibit No. 6.

Mr. Bistline: We have no objection to those.

The Court: They may be admitted.

Q. You mailed to Mrs. Sisil a blank form of claim to be filed with you as Receiver of Jesse M. Chase, Incorporated? A. That is correct.

Q. Why did you mail that if she was not a creditor of Jesse M. Chase, Incorporated?

A. I am trying to answer that. That is in the nature of an investment certificate and they were reflected on the financial statement as liabilities of the corporation, and we therefore mailed these blanks to all of those persons who were known or claimed to be or could have been considered as creditors of the corporation so that they would have an opportunity to file claims.

Q. So that the Receiver recognized first, and you recognize now Louise B. Musselman Sisil as a holder of an investor's certificate or certificates signed by Jesse M. Chase, and recognize her as a creditor of the corporation? [16]

A. We mailed blanks.

Q. And you admit that she is a creditor of the corporation as a holder of the certificates?

A. She is a holder of certificates.

Q. Was she a creditor,—did they owe it to her?

A. That is a difficult question.

(Testimony of Donald L. Burnett.)

Q. They assumed liability and agreed to pay it?

A. It is listed as a liability and they assumed the liabilities as you know, there is litigation which I am not competent to testify about. It is definitely a legal question.

The Court: Did they list it as a liability of the corporation? A. Yes sir.

Q. It is your position that after she put it into judgment she ceased to be a creditor?

A. My position is that the judgment is against Jesse M. Chase individually.

Q. Your record also shows that Jesse M. Chase formed the Jesse M. Chase, Incorporated, of Colorado? A. Yes sir.

Q. And your record also shows that Jesse M. Chase formed the corporation of Jesse M. Chase of Wyoming, Inc.? A. That is correct.

Q. And your record also shows that Jesse M. Chase formed the [17] Jesse M. Chase Casper Company, Incorporated? A. Yes sir.

Q. In addition to the Jesse M. Chase of Pocatello, Incorporated; just before the Receiver was appointed he formed the Jesse M. Chase of Pocatello, Incorporated? A. Yes sir.

Q. And also Jesse M. Chase, Incorporated, those two separate corporations? A. Yes sir.

Q. And then he had the Automotive Sales, Incorporated? A. Yes sir.

Q. And Jesse M. Chase had control of those corporations?

A. I am not aware of whether he had the con-

(Testimony of Donald L. Burnett.)

controlling interests; as to those years, I have never had occasion to refer to the stock ownership, or as to how the stock ownership lay.

Q. His report shows Jesse M. Chase as a holding corporation, holding stock in all of those different corporations?

A. I presume that is correct.

Mr. Davis: If the Court please, I am not exactly familiar as to how this Court handles its own files, but I would like to have introduced the record; at any rate, a part of the record as the cross-examination or as a part of the cross-examination of this witness [18] as receiver,—I want to introduce from the case of “*Louise B. Musselman Sisil, Plaintiff vs. Jesse M. Chase*,” No. 1539, the certificate of redemption issued by the United States Marshal to Donald L. Burnett, as Receiver of *Jesse M. Chase, Incorporated*, showing this Receiver as Receiver redeemed for the corporation the particular lots herein question. Should I have that deemed as marked?

Mr. Bistline: I would like to call attention to the fact that the certificate is included in the abstract of title which we offered.

The Court: We will take a short recess at this time,—we will be in recess for fifteen minutes.

May 2nd, 1950. 11:00 o'clock A. M.

Mr. Davis: I believe that the abstract does sufficiently show this.

The Court: Very well, you may proceed.

(Testimony of Donald L. Burnett.)

Q. You are a Certified Public Accountant?

A. That is correct.

Q. In your opinion as Receiver, is the Jesse M. Chase, Incorporated, a corporation, insolvent?

Mr. Bistline: We object to that, it calls for an unwarranted conclusion of the witness, and to give an opinion it would be necessary to have before [19] the Court all of the assets of the corporation and the liabilities to establish this, and it would be necessary to establish whether the liabilities claimed were or may be actually liabilities.

The Court: You might, if you desire, lay the foundation as to his knowledge as to the assets and the liabilities.

Q. Of course, I am asking this for the purpose,—you have had before you what I introduced as Exhibit Nos. 6 and 7, do you agree with Mr. Chase's statement that it is necessary to have a Receiver to regulate the affairs of Jesse M. Chase, Incorporated; do you think it was necessary?

A. In my opinion it was.

Q. You, of course, in the liquidation or the process of the liquidation of this corporation have gone over its assets and liabilities thoroughly?

A. Yes sir.

Q. And you are familiar with the assets and the liabilities generally of the corporation?

A. I am.

Q. In your opinion is that corporation insolvent?

Mr. Bistline: I renew the objection, the test is

(Testimony of Donald L. Burnett.)

whether the liabilities exceed the assets. I object to this as being immaterial at this time. [20]

The Court: This witness is an expert, and I think I will let him answer.

A. If I as Receiver am ultimately ordered to recognize all the investment certificates as liabilities and their holders as creditors, to share and share alike, then it is insolvent. If they were not recognized as creditors but holders of preferred stock, that would change the picture.

Q. You just stated a while ago that you did recognize all the investment certificate holders of Jesse M. Chase as creditors of Jesse M. Chase, Incorporated?

Mr. Bistline: I believe the witness answered that he recognized that the certificates were liabilities of the corporation, there is common stock and also preferred stock,—

Mr. Davis: —If it is counsel's position that Jesse M. Chase isn't legally liable for the investment certificate,—

Mr. Bistline: —No, we go further, we agree that he is liable for all of the common stock.

A. This is a very difficult thing to answer.

The Court: Well, Mr. Witness, if you can answer that,—I think it could be stipulated that they are liabilities of the corporation because the evidence [21] now shows that they assumed all of the obligations that Jesse M. Chase had; can it be understood that at the time the transfer was made that Jesse M. Chase, Incorporated, assumed all the indebtedness of Jesse M. Chase, personally?

(Testimony of Donald L. Burnett.)

Mr. Bistline: Yes, that can be stipulated.

The Court: If that is stipulated I think that is all that is necessary.

Mr. Bistline: There is one limitation, I think,—

The Court: —I understand from the witness that he has indicated there may be some litigation over these investment certificates, the Court takes judicial notice of the fact that there was litigation in this court, and the Court made a decision. The Court held that it was a liability and that it had to be paid with certain limitations; if this Court happened to be right, then all of these other certificates may be in the same position. This witness has testified and it is now stipulated that the obligations of Jesse M. Chase included these different certificates, and they were liabilities, and assumed at the time of the transfer, is that correct?

Mr. Bistline: That is agreed based on the financial report. [22]

The Court: Whether there is a report of the obligations of Jesse M. Chase being assumed by Jesse M. Chase, Incorporated.

Mr. Bistline: In connection with the business,—

The Court: —In connection with everything, the obligation of Jesse M. Chase while he was operating or he transferred to the corporation, which is the Plaintiff in this case; when he transferred the understanding was that he assumed the obligation.

(Testimony of Donald L. Burnett.)

Mr. Bistline: That is not entirely correct; they assumed the obligation as revealed by the balance sheet.

The Court: But at that time there was no obligation of the corporation.

Mr. Bistline: As revealed there Mr. Chase's individually,—the corporation assumed that as a part of the transfer.

The Court: This claim was included in that balance sheet.

Mr. Bistline: That is there, yes.

The Court: Then it seems that is all there is to it.

Q. Mr. Burnett, in your opinion, is there any probability of any common stockholder ever receiving anything as a [23] stockholder in the liquidation of Jesse M. Chase, Incorporated?

A. Not in my opinion, there is no probability of them receiving any distribution.

Q. And that is true of the preferred stock?

A. That is correct.

Mr. Davis: I think that is all.

Redirect Examination

By Mr. Bistline:

Q. Mr. Burnett, you have testified here with regard to stockholders of common stock, are you familiar with the preferred stock holdings?

A. I have reviewed them.

Q. Have you looked over the stock book?

A. Yes sir.

Q. Handing you Exhibit No. 8, I will ask you

(Testimony of Donald L. Burnett.)

to state whether or not that is the stock book of Jesse M. Chase, Incorporated, preferred stock?

A. Yes sir.

Mr. Bistline: We offer it in evidence.

Mr. Davis: And I object to it as incompetent and irrelevant for the reason that the certificate book that he holds there will show that such preferred stock as was issued was issued subsequent to the time that the corporation assumed all of the indebtedness [24] of Jesse M. Chase, individually; subsequent to the time that it assumed payment of the certificate of Mrs. Sisil upon which the judgment is based. Furthermore, that none of the stock holders are parties to this action. The Receiver stands in the shoes of the corporation and it is immaterial here for any purpose.

Mr. Bistline: This is to determine whether a judgment executed in 1949 is controlling, or the filing date of the judgment,—

The Court: —I think the controlling date is the date when the transfer was made to the corporation by Jesse M. Chase, and the obligations pending at that time. I will admit this subject to the objection made with the understanding that the Court can strike it if it is subject, in the court's opinion, to be stricken.

Q. Does the report which was received as Defendant's Exhibit No. 6 give a resume or summary of the preferred stock holdings as of the date of the report? A. It does.

(Testimony of Donald L. Burnett.)

Q. Will you refer to the report and state how many preferred stockholders there were?

A. Fourteen.

Q. How many shares of preferred stock was outstanding? A. 278. [25]

Mr. Bistline: At this time the Plaintiff desires to have marked as an exhibit the minutes of a meeting of the stockholders held on the 15th day of January, 1947, of Jesse M. Chase, Incorporated, a corporation. We have prepared a copy of these minutes,—not a certified copy, but we do have a prepared copy which I suggest, if agreeable to counsel, that it be marked.

Mr. Davis: That part is all right, it may be marked.

The Court: Have it marked for identification and submit it to counsel.

Mr. Bistline: At this time Plaintiff offers in evidence Plaintiff's Exhibit No. 9, which is a copy of the minutes of the meeting previously referred it.

Mr. Davis: I realize that this is a matter before the Court and this is probably going in as evidence; they have not identified these minutes or who kept them. Mr. Burnett probably does not know. I will not object to the introduction if I may have the right to examine Mr. Chase or anybody else with reference to this minute book.

Mr. Bistline: We have no objection to that procedure.

The Court: They may be admitted. [26]

(Testimony of Donald L. Burnett.)

Mr. Bistline: At this time Plaintiff offers Exhibit No. 10, which is a copy of the minutes of a special meeting of the board of directors of Jesse M. Chase, Incorporated, held on the 25th day of February, 1947, containing the offer of Jesse M. Chase to the corporation, to the transfer of the assets of the consideration of the issuance of stock and so forth. We offer it in lieu of the original in the book subject to being checked.

The Court: They may be admitted with that understanding.

Mr. Bistline: At this time the Plaintiff offers in evidence Plaintiff's proposed exhibit No. 11 which is a financial statement of the Jesse M. Chase enterprises as of December 31, 1946, which is referred to in the minutes of the board of directors, being plaintiff's exhibit No. 10.

The Court: It may be admitted.

Q. Mr. Davis examined you with reference to the redemption from the sale held under the judgment of Louise B. Musselman Sisel vs. Jesse M. Chase and you in effect as Receiver stated the circumstances surrounding that redemption?

Mr. Davis: Now we object to this, the redemption and the facts recited in the instrument [27] itself would be the best evidence.

The Court: The objection is sustained.

Mr. Bistline: That is all.

Mr. Davis: That is all.

I. H. NELSON

Being called as a witness by the Defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Davis:

Q. You live at Pocatello? A. Yes.

Q. And your occupation or business?

A. Public Accountant.

Q. You formally worked for Jesse M. Chase, individually? A. Yes sir.

Q. How long did you work for Jesse M. Chase as an individual?

A. From March 16th, 1946, until December 31st, 1946.

Q. And what were your duties,—say on the 31st of December, 1946, what were you doing?

A. I was an Accountant employed to work on the books for Mr. Chase as an individual.

Q. You were one of the original incorporators of Jesse M. Chase, Incorporated?

A. I was. [28]

Q. Did you subscribe for one share of stock?

A. Yes, I did.

Q. Do you know the other two men that subscribed for shares of stock?

A. Jesse M. Chase and W. R. Hubble.

Q. Did each of you pay for one share of stock?

A. We did.

Q. The cash of \$300.00 for one share of stock got into the assets of the corporation?

(Testimony of I. H. Nelson.)

A. Yes sir, deposited in the corporation bank account.

Q. Was any of the other stock issued paid for in cash, any other common stock issued?

A. I do not believe so.

Q. Before this corporation was formed, or at the time you signed the proposed articles of incorporation the matter was discussed by Mr. Chase, Mr. Hubble and you?

A. Yes, it had been talked over.

Q. And you as an incorporator and an employe at that time, were you personally aware of the fact that not only Mrs. Musselman or Mrs. Sisil's certificates were outstanding and unpaid, but that there were others outstanding and unpaid?

A. Yes, indeed.

Q. And the other incorporators knew that?

A. Yes sir. [29]

Q. What was your understanding upon the formation of the corporation as to whether your stock was subject to, or whether it was burdened with the payment of all of the obligations of Jesse M. Chase?

A. All of these obligations were listed in a statement of liabilities.

Q. And you knew that they were liabilities against the corporation, that the stockholders took their stock subject to the payment of those liabilities? A. Yes.

Q. Who was Mr. Ash who was also a stockholder?

(Testimony of I. H. Nelson.)

A. Mr. Ash was at one time General Manager for Jesse M. Chase; at the time of the corporation, he was a store manager in California.

Q. And Mr. Anderson, who was he?

A. At the time of the incorporation he was not an employe of the company or connected with it.

Q. Who was he?

A. He was an employe of a finance company in Denver.

Q. What finance company was that,—was Mr. Chase connected with that? A. No sir.

Q. When did Mr. Anderson come here?

A. It was after the incorporation that he came as an employe.

Q. And he received one share of stock?

A. Yes sir. [30]

Q. He never paid any cash for it, did he?

A. I think it was charged to his account.

Q. Do you know or not,—strike that,—do you know the amount the corporation was incorporated for, was it a million five hundred thousand?

A. I think that was.

Q. Five hundred thousand common stock and a million preferred stock?

A. I think that is right.

Q. And Lee C. Bloxham, was he an employe of Jesse M. Chase? A. Yes sir.

Q. He was at the time the corporation was formed? A. Yes sir.

Q. D. M. Weiler, was he an employe of the corporation or Jesse M. Chase?

(Testimony of I. H. Nelson.)

A. I believe he was employed by a separate corporation, Jesse M. Chase Incorporated of Wyoming.

Q. One of the corporations that Mr. Chase was interested in? A. Yes sir.

Q. And Bryon S. Dee, who was he?

A. He was not connected with the corporation.

Q. And D. L. Edlefesen?

A. He was an employe of Jesse M. Chase.

Q. Crane and Heider?

A. They were Accountants for the corporation, yes. [31]

Q. And W. T. Ingram?

A. He was an employe at Boise.

Q. And George W. Puw?

A. He was an employe.

Mr. Davis: I believe that is all.

Cross-Examination

By Mr. Bistline:

Q. Have you subsequently acquired any additional stock other than the one share you took?

A. No sir.

Q. That is all you have?

A. That is all I have.

Mr. Bistline: That is all.

Mr. Davis: That is all.

JESSE M. CHASE

called as a witness by the Defendant for cross-examination, having heretofore been duly sworn, testifies as follows:

Cross-Examination

By Mr. Davis:

Mr. Bistline: I think if he is being called, that he should be called as their witness for direct examination.

Mr. Davis: I don't think so, he was the [32] President of this corporation.

The Court: You may go ahead, Mr. Davis.

Q. You testified as a witness in District Court in November of 1949, the District Court of Banock County, in support of a petition or application of Mr. Youngren for the appointment for a Receiver for Jesse M. Chase, Incorporated, did you not?

Mr. Bistline: He can testify as to whether or not he testified as a witness, but the balance I object to as irrelevant, incompetent and immaterial, and a conclusion.

Q. You were a witness on the matter of the petition for the appointment of a Receiver for Jesse M. Chase, Incorporated? A. Yes sir.

Q. Did you testify that Jesse M. Chase was absolutely insolvent and could not pay its debts?

A. I did not.

Q. Did you testify that the corporation was insolvent? A. I did not.

Q. Did you testify that Jesse M. Chase indi-

(Testimony of Jesse M. Chase.)

vidually was insolvent and couldn't pay his debts.

A. I did not.

Q. Did you testify that Jesse M. Chase had nothing as an individual and could not pay anything?

A. I don't follow that question. [33]

Q. Did you testify when you were asked if you had any assets with which you pay any investment certificate holders, that you couldn't and didn't have anything?

A. I was not asked that question.

Mr. Davis: I have asked Mr. Ray D. Bistline, the Court Reporter, if he could prepare a transcript, and he said that he could not at this time as they were trying a case at American Falls, but my notes show that he testified in effect to what I have stated,—if it is material, and the Court feels that it is, I would like permission as quickly as the Court Reporter can furnish it to have the testimony and to be allowed to furnish it to the Court.

Mr. Bistline: We feel that it is immaterial. We fail to see any materiality in this.

The Court: I will say frankly that I have been trying to see the materiality of a lot of these matters. I am satisfied at this time that this was just a matter of convenience, the transferring which was done, and I feel that Jesse M. Chase was the main man in both of these businesses. It was just a matter of transferring the assets of the individual to the corporation, and he was still the corporation himself so to speak. I fail to see the materiality of

Testimony of Jesse M. Chase.)

this at the time. Mr. Chase has been called and asked these [34] questions and he has denied that he so testified.

Mr. Bistline: Of course, we want everything before the Court, and perhaps if we could get a transcript of that evidence and Mr. Chase sees it it will refresh his memory.

The Court: Then, Mr. Davis, you may supply that record.

Q. I call your attention to the minutes of the first meeting of the board of directors of Jesse M. Chase, Incorporated, being signed by you, do you recognize that as the minutes? A. I do.

Mr. Davis: I would like to read into the record a portion of those minutes:

“It was announced to the meeting that the original incorporators, namely: Jesse M. Chase, W. R. Hubble, and I. H. Nelson, have each subscribed to one share of the capital stock of the corporation of the par value of \$100.00 each, that the secretary upon payment for said certificates was instructed to issue the certificates to the said Jesse M. Chase, W. R. Hubble, and I. H. Nelson, for one share each of the capital stock of the corporation, it was announced at the meeting by Jesse M. Chase that the corporation intends and contemplates in the near future to take over the [35] assets, liabilities and good will of the business generally heretofore conducted by Jesse M. Chase as an individual in various States, namely:

(Testimony of Jesse M. Chase.)

Utah, Wyoming, Nevada, Montana, Illinois, California, Washington, Oregon, New Mexico and Nebraska, and that in anticipation of transferring said business to the corporation it is desirable that the corporation become qualified to do business in the above-named states as a foreign corporation. However, in addition to other requirements it would be necessary for the corporation to appoint a resident or statutory agent in the various states, whereupon, it was moved by I. H. Nelson and seconded by W. R. Hubble, and upon vote of the meeting unanimously carried as follows: That the statutory agent be appointed for Wyoming, Utah, Nevada, Montana, Illinois, California, Washington, Oregon, Arizona, New Mexico and Nebraska."

Q. You recognize that? A. Yes.

Q. Mr. Chase, you were active in and participated and supported the Plaintiff, Mr. Youngren, in his action in securing the appointment of a Receiver for Jesse M. Chase, Incorporated?

Mr. Bistline: Objected to as immaterial.

The Court: He may answer.

A. I did not support Mr. Youngren in the application for Receiver. [36]

Q. You were active in,—did you testify under oath that a Receiver should be appointed for Jesse M. Chase, Incorporated? A. I did.

Testimony of Jesse M. Chase.)

Q. Did you want a Receiver appointed for a solvent corporation?

A. I wanted a Receiver appointed to conserve the assets of the corporation.

Q. You want to continue to operate the corporation? A. You are right.

Q. You testified that if a Receiver was appointed you could go ahead and borrow money and continue to operate?

A. Under the court's jurisdiction.

Q. You were active in and testified in the action in which Mr. Youngren was Plaintiff, and you sat at the table with counsel who was trying to get a Receiver appointed?

A. I was in favor of the appointment of a Receiver.

Q. You are still actively engaged in and trying to operate Jesse M. Chase, Incorporated?

A. I have nothing to do with Jesse M. Chase, Incorporated.

Q. You were mad and indicated to the Receiver and the Attorneys because of a suit filed against you by Mrs. Sisil that you were going to prevent her from recovery in this matter?

Mr. Bistline: I object to that as immaterial. I fail to see the materiality of it. [37]

The Court: He may answer.

A. No.

Q. In September, 1949, after Mrs. Sisil had received her judgment, you sent to her at Riverside, California, a statement for her to sign showing how

(Testimony of Jesse M. Chase.)

much indebtedness she claimed against Jesse M Chase, Incorporated, did you not?

A. Not without looking at the record, I can't say.

Q. You don't know whether you wrote her or not?

A. I don't know.

Q. Did you send her that (indicating)?

A. This was,—I recognize this.

Q. Did you send it to her?

A. Yes sir.

Q. Why did you send it?

A. It was sent to all of the creditors.

Q. The creditors of Jesse M. Chase, Incorporated?

A. So far as the books show.

Q. You have reference now to Defendant's Exhibit No. 12?

A. Yes sir.

Q. You understand that is what I was asking about?

A. You know what it is.

Q. You understand that is what I am asking about?

A. Yes, sir.

Mr. Davis: We offer in evidence Defendant's exhibit No. 12. [38]

Mr. Bistline: We have no objection.

The Court: It may be admitted.

Q. Now then, Mr. Chase, after January of 1947, when you incorporated, you still continued to operate a part of the time as Jesse M. Chase and a part of the time as Jesse M. Chase, Incorporated?

A. No.

Q. You did not?

A. No.

Q. You still continued to use the stationery of Jesse M. Chase as an individual, and signed letters to Mrs. Sisil as Jesse M. Chase, President?

Testimony of Jesse M. Chase.)

A. Some of the old stationery might have been used.

Q. Your answer a minute ago was not correct?

A. My answer was correct.

Q. Handing you Defendant's exhibit No. 13, is that your signature to that? A. It is.

Q. Is that a letter you wrote to Mrs. Sisil?

A. Yes sir; and a copy to you.

Q. You wrote that letter of March 30th, 1949?

A. That is right.

Q. That letter shows that it is written on the letterhead of Jesse M. Chase, individual?

A. It is signed Jesse M. Chase, President. [39]

Q. What does that letterhead show?

Mr. Bistline: I think the exhibit speaks for itself.

The Court: Perhaps so, but he may answer.

A. That is a carbon copy.

Q. What does the letterhead show—it shows Jesse M. Chase as an individual, does it not?

A. It is a copy of a letter, Jesse M. Chase, general office, Pocatello.

Q. What was that name you just called me; what was that name you just called me, Mr. Chase? Do you want to tell the Court what you just called me just now? A. I called you nothing.

Q. Very well, you were incorporated in January, 1947? A. That's right.

Q. And more than two years after that, on March 30, 1949, you were still using Jesse M. Chase individual stationery?

(Testimony of Jesse M. Chase.)

A. Second sheets stationery.

Q. You were still using it?

A. It has been used.

Q. And you were signing it as President?

A. Yes, sir.

Mr. Davis: We offer in evidence Defendant's Exhibit No. 13. [40]

The Court: It may be admitted.

Q. You have been President of Jesse M. Chase, Incorporated, ever since that corporation was organized?

A. That is right.

The Court: We will recess at this time until 2:00 o'clock.

May 2nd, 1950—2:00 o'Clock P.M.

Q. Mr. Chase, as President of Jesse M. Chase, Incorporated, a corporation, if a judgment of Mrs. Sisil is a valid judgment—assuming that it is, what is your position, that that judgment should be paid out of the assets of the corporation or by you personally?

Mr. Bistline: We object to that as calling for a conclusion and having no bearing on the issues and being immaterial.

The Court: He may answer, the Court having control of this matter, I will permit him to answer.

A. By the corporation.

Q. The judgment, of course, is an obligation of the corporation just as much as any other obligation the corporation has?

A. That is right.

Q. You never considered after you transferred

(Testimony of Jesse M. Chase.)

your real estate, and the real estate in question to the corporation [41] in 1947 that you had an interest in that real estate?

A. No, sir, I didn't.

Q. However, on the 8th of February, 1950, you and your wife did give a quit claim deed to that real estate to Donald L. Burnett, Receiver of Jesse M. Chase, Incorporated?

A. Yes, sir.

Q. On February 28, 1950—strike that—you and your wife on February 8th, 1950, assigned your rights of redemption of the particular real estate in question here to Mr. Burnett as Receiver?

A. Yes, sir.

Mr. Davis: That is all.

Redirect Examination

By Mr. Bistline:

Q. At the time you executed this quitclaim deed in February of 1950 to that property, did you consider that you had any interest in the real estate?

A. No, sir.

Q. At the time you assigned this right of redemption did you consider that you had any right of redemption in the property?

A. No.

Q. Following the incorporation of Jesse M. Chase, Incorporated, what was the practice with regard to [42] making income tax returns as to the corporation and yourself?

A. After January 1, 1947, the corporation returns were made by the corporation, and then I made my personal returns separate.

(Testimony of Jesse M. Chase.)

Q. Did you report in your personal report any income you made in the corporation?

A. I reported my personal returns separate.

Q. Since this matter has reached the status it is in, has the United States government made any claims against you personally of the income of the corporation made personally prior to that?

A. Yes.

Q. For what amount?

A. For twenty-seven thousand dollars.

Q. Do you know whether they are attempting to enforce that against the corporation?

A. I don't know.

Q. Your attention was called to a hearing in the district court before Judge Glennon, brought by the filing of a complaint, concerning a Receiver and the signing of an order, at which time you were a witness. Do you recall who called you as a witness in that case?

A. No, sir. [43]

Q. Do you recall Mr. Davis examining you there?

A. Yes, sir.

Q. Do you recall whether that hearing was started before the levy was made under this Sisil judgment?

A. I wouldn't know.

Q. Mr. Chase, calling your attention to exhibit No. 13, just look at that, that is the one that has Jesse M. Chase at the top?

A. Yes, sir.

Q. And it is signed by Jesse M. Chase, President?

A. Yes, sir.

Q. Will you explain the use of that particular

Testimony of Jesse M. Chase.)

Stationery? A. That is a second sheet.

Q. Will you explain why it bears the heading Jesse M. Chase without showing corporation?

A. It would probably be stationery carried from prior to the incorporation.

Q. Do you recall how the first sheet read, the first sheet of that letter?

A. I wouldn't know now.

Q. To whom was this addressed?

A. To Mrs. Sisil.

Q. And this copy, to whom was that sent?

A. To Attorney Ben Davis. [44]

Q. Calling your attention to exhibit No. 12, do you recall about the time that was sent out?

A. At the time a meeting was called of all the creditors to be held on October 29th.

Q. The creditors of whom?

A. Jesse M. Chase, Incorporated.

Q. Was that before or after Mrs. Sisil had obtained her judgment?

A. It was in October, 1949, I think it was at that time.

Q. It was some little time before the appointment of a Receiver?

A. Yes, this meeting was held prior to the appointment of a Receiver.

Q. Was that before she received her judgment, the date of the judgment was October 1, 1949?

A. I don't know when these were mailed out, it was for a meeting to be held October the 29th.

Q. Do you know—were interest checks mailed to

(Testimony of Jesse M. Chase.)

Mrs. Sisil between the period between January 1st 1947, and the date of the Receivership?

A. What was that?

Q. Were there any interest checks mailed to Mrs. Sisil between January of 1947 and the date of the Receivership in November, 1949?

A. Yes, sir. [45]

Q. Do you know whether they were drawn on your personal account or the account of the corporation?

A. Corporation checks.

Mr. Bistline: That is all.

Recross-Examination

By Mr. Davis:

Q. You didn't have any interest whatever in the real estate, but also you gave a quit claim deed and assigned the right of redemption?

A. That is correct.

Q. Did Mr. Bistline advise you to do that, that it was necessary?

A. The request was made by the Receiver.

Q. By the Receiver that you do that?

A. Yes, sir.

Q. Did you—strike that—Mr. Chase, I am handing you exhibit No. 13, do you say that is a carbon copy and that it is not the original letter that you mailed to Mrs. Musselman Sisil?

A. That is right.

Q. It is not the one that you mailed her?

A. It should be a carbon copy.

Q. Is it? A. Yes, sir. [46]

(Testimony of Jesse M. Chase.)

Q. Who did you send the original of this letter to? A. Mrs. Sisil.

Q. This is not the one you sent her?

A. I sent that to you.

Mr. Davis: That is all.

Mr. Bistline: That is all.

Mr. Davis: If the Court please, I think that my pleadings are sufficient, but I do not want to take any chances, and I would like permission to add another affirmative defense, that the Plaintiff in this case has established—I should say that the Defendant has established from the questions asked the evidence given here, the validity of the judgment against the Receiver of the corporation, and if the prayer in my pleadings does not say so, that it be amended, that I be permitted to amend the prayer by adding that this judgment be declared to be a valid judgment against Jesse M. Chase, Incorporated.

Mr. Bistline: We want to object unless we are given an opportunity of defending against this proposed amendment—we should be apprised of this amendment which is in the form of an estoppel and we should be accorded the opportunity of defending.

The Court: The amendment will be allowed and you will be permitted to offer any defense that [47] you desire.

Mr. Davis: We rest.

WALTER R. HUBBLE

called in rebuttal by the Plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Bistline:

Q. Your name is W. R. Hubble?

A. Yes, sir.

Q. What is your present occupation?

A. Bookkeeper.

Q. Were you previously connected with the firm of Jesse M. Chase, Incorporated?

A. Yes, sir.

Q. For how long?

A. Since the incorporation.

Q. In what capacity?

A. As Vice-President and General Manager.

Q. During the entire existence of that corporation?

A. Yes, sir.

Q. From its time of incorporation up to the time of the Receivership?

A. Yes, sir.

Q. Are you a stockholder in that corporation?

A. Yes, sir.

Q. How many shares do you have?

A. Twenty-one shares of common stock and fourteen of preferred.

Q. When did you acquire this common stock?

A. At the time of the incorporation or soon thereafter, I cannot give the dates, but it is on the books.

Q. Referring you to Defendant's Exhibit No. 5,

(Testimony of Walter R. Hubble.)

the stock book of the common stock, would you check through that and tell us what stock you acquired and when?

A. On January 15th, 1947, one share.

Q. Will you state what consideration was paid and how it was paid?

A. One hundred dollars in cash. On January 31st, 1947, twenty shares and paid for in surrender of cash assets.

Q. And what year did you say that was?

A. 1947.

Q. Proceed, Mr. Hubble, you said it was by the surrender of cash assets?

A. Yes, investment certificates I had of Jesse M. Chase.

Q. Personally?

A. Yes, personally, that seems to be it.

Q. Now, then, Plaintiff's Exhibit No. 8, the book of the preferred stock, would you check through that and state what stock you held, of the preferred stock, and state when you acquired it and what the consideration was? [49]

A. On February 1st, 1948, eleven shares.

Q. Will you state what the consideration was for that stock?

Mr. Davis: I object to that as incompetent, irrelevant and immaterial, being over a year after the corporation was formed when this party who was one of the incorporators and had knowledge of the assumption of Mrs. Sisil's certificate, the taking of preferred stock by an officer of a corporation

(Testimony of Walter R. Hubble.)

could not in any way be a defense as against her judgment in this matter.

The Court: He may answer for what it may be worth, the Court will give it such weight and consideration as it thinks the matter is entitled to, and at the same time considering your objection.

A. This stock was issued upon surrender of one investment certificate that I had bought for cash, investment certificate of Jesse M. Chase.

Q. And how many shares was that?

A. Eleven. On October 22, 1948, three shares of preferred stock for which I paid cash.

Q. Do you recall how much cash?

A. Three hundred dollars.

Q. Any other stock that you hold?

A. No, sir, that is it. [50]

Q. Are you familiar with the holding of the other stockholders of common stock in the corporation?

A. There were other holders.

Q. Are you familiar with the consideration each of them paid?

A. I think the books disclose it.

Q. Could you tell what they paid by looking at those?

A. I don't know as I could.

Q. Will you look through this and see if it refreshes your memory.

A. What do you want me to do?

Q. What I want you to testify to is the consideration paid by the stockholders of each of the shares of stock, the common stock.

A. The first three shares Mr. Chase, myself and

(Testimony of Walter R. Hubble.)

Mr. Nelson, I saw the checks that paid for those.

Q. Calling your attention to the W. G. Ash certificate for twenty shares, are you familiar with that certificate?

A. He had a certificate that he turned in, I couldn't say without turning to the books.

Q. Could you by turning to the books?

A. This is the ledger for 1949, and that was in 1947.

Q. Do you know whether he paid cash? [51]

A. The equivalent of cash.

Q. Do you know what equivalent of cash he paid?

A. Investment certificates of Jesse M. Chase.

Q. Of the same value?

A. Of an equal value, these were reissued to Mr. Chase at the time he surrendered his personal holdings for the corporation holdings.

Q. Is there any other stock outstanding?

A. Norville Anderson, I don't remember about that without looking at the books.

Q. I believe that we can save time by referring to Defendant's Exhibit No. 6, here is a list of the holders of preferred stock, are you familiar with the consideration paid for preferred stock as shown here?

A. I know it was bought and paid for but I don't know that I can say how without looking at the books.

Q. Can you look over the list and give us any further information. Could you give us any further

(Testimony of Walter R. Hubble.)

information in regard to the manner of payment for the various issues of preferred stock?

Mr. Davis: Do you have an independent recollection of the dates of those transactions and how these people paid for this stock?

A. I couldn't give you the dates.

Mr. Davis: The real proof and the [52] real evidence would be the books of the corporation?

A. That would be the ledger.

Mr. Davis: We object to this witness trying to testify about that.

The Court: The books would be the best evidence.

Mr. Bistline: We certainly agree with that.

Q. Do you have any independent recollection as to this?

A. I know that these people have the stock and bought stock, but as to the details I do not know.

Q. You have no independent recollection?

A. No, I have not.

Mr. Bistline: I believe that is all.

Cross-Examination

By Mr. Davis:

Q. How long have you been or were you associated with Mr. Chase in a business way?

A. Since 1932.

Q. Now, you had some investors' certificates or investment certificates which you exchanged for twenty shares of common stock?

A. Yes, sir.

(Testimony of Walter R. Hubble.)

Q. At that time you were an officer of the corporation? A. Yes, sir. [53]

Q. And all of the times from the time this corporation was formed or incorporated up to the present time you have been and are an officer of the corporation? A. Yes, sir.

Mr. Davis: That is all.

Redirect Examination

By Mr. Bistline:

Q. At the time of the incorporation do you recall what the status of the corporation was in regard to being solvent or insolvent?

A. I think the financial statement shows that it was solvent.

Mr. Bistline: That is all.

Recross-Examination

By Mr. Davis:

Q. You knew all about it, you had been working there for years?

A. I knew something of the operation.

Q. You were the general manager?

A. I had access to the books and I knew what was going on.

Mr. Davis: That is all.

Mr. Bistline: That is all.

DONALD L. BURNETT

recalled in rebuttal by the Plaintiff, having heretofore been duly sworn, testifies as follows: [54]

Direct Examination

By Mr. Bistline:

Q. Mr. Burnett, I want to call your attention to a situation in February of this year when a redemption was effected of the property involved in this suit by you as Receiver of Jesse M. Chase, Incorporated, a corporation, please state what the circumstances were leading up to that redemption?

Mr. Davis: I object to that as incompetent, irrelevant and immaterial and hearsay, and not the best evidence. The Plaintiff in this case—I assume it is an attempt and he certainly cannot come in and attempt to attack or show that the redemption made in this Court on the United States Marshal's certificate is anything other than it purports to be on its face.

The Court: He may answer subject to your objection, the Court will give it such weight as it is entitled to.

A. You wish me to relate the circumstances as I see them leading up to the redemption?

Q. That is right.

A. A short time after I was appointed Receiver we opened negotiations to get bids on the real estate; the bids were opened and C. C. Andersons were the high bidders. It was the high bid that we received and we thought it [55] to be an excellent

(Testimony of Donald L. Burnett.)

offer—it was \$80,000.00 to be exact; we were pleased and anxious to consummate the deal. There had been considerable dealing and the agent for Andersons was anxious to complete the transaction; shortly after we accepted their bid and began to transfer the real estate, or rather the title to the real estate, their attorney advised us that we would have to furnish title insurance; they came in—their representatives came in with a purported list of what I called clouds on the title; these matters would have to be taken care of before they would issue a title insurance policy. Most of these items were creditors—judgment creditors against Jesse M. Chase and they gave us no particular problem. We recognized them and subsequently paid them. Mr. Seda, however——

Q. Who is Mr. Seda?

A. Attorney for the title company, he advised with an attorney at Boise. This property had been sold at United States Marshal's sale to Mrs. Sisil; Mr. Davis was her attorney, for some thirty-two hundred dollars and before they could issue title insurance that cloud would have to be removed. It was his opinion that this sale perhaps had not been a legal one.

The Court: This witness is testifying about things now that are certainly not admissible in [56] evidence, but he may go ahead, there is no objection.

A. He told me that we would have to clear the title whether it was a bona fide one or not. He could not issue the title policy until we cleared the title.

(Testimony of Donald L. Burnett.)

His suggestion was that we redeem the property and we proceeded at Mr. Seda's suggestion and we obtained this quit claim deed and this assignment of redemption. It was my thought that our efforts to redeem would not be successful, we were disturbed because the representative of the C. C. Anderson Company advised us that if we could not consummate the deal that they would have to withdraw their bid which would be disastrous as the next bid was some \$20,000.00 less and we decided to go to the Marshal at Mr. Seda's suggestion, although he considered it superfluous.

The Court: How do you know that it was superfluous?

A. Those were his words, he told us that we would have to redeem and he advised me to get the quit claim deed and the right of redemption, and we proceeded to Boise to effect the redemption and I filed it as a matter of record. It was done at my own instigation after advising with counsel solely upon the statement that they would not be able to issue title insurance. That we must do that before the title insurance was given [57] and C. C. Anderson Company said they would withdraw their bid. We had a good many thousands of dollars at stake and we proceeded exactly as I have related to you.

Q. Did you at that time recognize that Jesse M. Chase had any interest in this property?

A. No, sir, my original plans in going to Boise——

(Testimony of Donald L. Burnett.)

The Court: I think you have answered the question by No, Sir.

Q. Did you make any effort to dispose of this matter—to dispose of this cloud on the title by asking for an early hearing on this case?

A. Yes, sir.

Q. Before redemption?

A. Yes, sir, before the day of redemption.

Mr. Bistline: I think that is all.

Cross-Examination

By Mr. Davis:

Q. If I understand it now, you didn't consider that Mr. Chase had any interest in this property, but under heavy pressure which was on you, and you saw that you could get the sale through you went ahead and recognized his title and took the assignment of redemption and the quit claim deed from him?

A. I didn't recognize that he had any title. [58]

Q. Why did you want the quit claim deed and the right of redemption?

A. The Title Insurance Company said that it would be wise.

Q. And the attorney told you until you got it that the title would not be good and they would not give you any money?

A. The Title Insurance Company said that the title would not be good.

Q. Are you trying to take the position that you did something illegal to get this through——

(Testimony of Donald L. Burnett.)

A. —I don't think your statement is fair. I thought it was the law.

Q. Whether you thought it was the law or thought it was right, in order to sell this property and get the money from this good offer you had to redeem that property and had to recognize Mrs. Sisil's certificate from the Marshal as being good, didn't you? A. Mr. Seda told me—

Q. —I think you can answer that without saying what Mr. Seda said.

A. Not as you stated.

Q. At any rate, it was a benefit to the corporation to have this sale go through, and it was such a benefit that you took the money out of the assets of the corporation and redeemed from the Marshal's sale? A. Yes, sir. [59]

Q. You petitioned the District Court to be permitted to do that? A. Yes, sir.

Q. And you didn't say anything in there about it being illegal, you didn't say anything about it being wrong at all? A. No, sir, I did not.

Q. You verified your petition to the Court?

A. Yes, sir.

Q. And the Court in his order gave you authority to redeem and never made any reservation whatever in it?

A. Not to my recollection—he approved the petition.

Q. Now, Mr. Burnett, maybe I can state this so that it will be fair. Do you consider, and is it your position, that you could recognize for one purpose

(Testimony of Donald L. Burnett.)

Jesse M. Chase having an interest in it and taking a quit claim deed and an assignment of redemption, and that you could recognize that as being valid when it comes to protecting the property assets, and that you can deny it being valid now when it is to your advantage, after you once recognized it?

A. That is not my position.

Q. That is what you are trying to do isn't it?

A. No, sir.

Q. Mr. Burnett, you testified as to what Mr. Sega told you [60] to do, but that he didn't consider the sale was of any legality, have you any written opinion from him?

A. No, sir.

Q. Didn't Mr. R. D. Merrill representing Andersons go in and examine this title?

A. Yes, sir.

Q. Have you a written opinion from him?

A. No, sir.

Q. He told you that in view of the manner in which this corporation was formed that you would have to get this quit claim deed from Jesse M. Chase and he would not approve it until it was cleared up?

A. His position was that I would have to have a title insurance policy.

Q. You are familiar with the suits of Doctor Merrill and Doctor Pond that are pending?

A. Yes, sir.

Q. Against Jesse M. Chase individually and the corporation?

A. Yes, sir.

Q. They are on investors' certificates signed by Jesse M. Chase only?

A. Yes, sir.

(Testimony of Donald L. Burnett.)

Q. And you are holding this money out of the assets to pay these claims?

A. We pledged it with the clerk of the court. [61]

Mr. Davis: I believe that is all.

Redirect Examination

By Mr. Bistline:

Q. In the case of C. W. Pond against whom was that suit brought?

A. Against Jesse M. Chase individually, and Jesse M. Chase, Incorporated, jointly.

Q. And you made a deposit with the Court to protect the attachment? A. Yes, sir.

Q. Did you do that because they were suing Jesse M. Chase, individually? A. No, sir.

Q. Did you do that because they were suing the Jesse M. Chase corporation?

A. That is the reason.

Q. And this money that was paid in, were those judgments against Jesse M. Chase individually?

A. No, sir.

Q. They were against Jesse M. Chase, Incorporated? A. Yes, sir, they were.

Q. I will ask you to explain your position with regard to this redemption.

The Court: I think we will take a short recess at this time. [62]

(Testimony of Donald L. Burnett.)

3:00 o'Clock P.M.—May 2nd, 1950

Q. I want to call your attention to page 29 of Defendant's Exhibit No. 4, the same being the abstract of title, and appearing on page 29 is the assignment of right of redemption, and I call your attention to the wording of this assignment: "That I, Jesse M. Chase, Judgment Debtor, in the hereinafter referred to judgment, do, for value received, hereby assign, to Donald L. Burnett, Receiver of Jesse M. Chase, Incorporated, a corporation, pursuant to appointment by order of the District Court of the Fifth Judicial District of the State of Idaho, in and for Bannock County, in the case wherein J. A. Youngren is Plaintiff and Jesse M. Chase, Incorporated, a corporation, is Defendant whatever right of redemption I may have as such Judgment Debtor to redeem whatever right, title, interest, or estate I may now have, or may have had at the time of or at any time since the entry of judgment by judgment lien, or levy of execution in and to the hereinafter described property from that certain sale conducted by the United States Marshal for the District of Idaho, on November 26, 1949, at court house in Pocatello, Bannock County, Idaho, upon execution issued upon the judgment entered in case of Louise B. Musselman Sisil, Plaintiffs, against Jesse M. Chase, Defendant, in District Court [63] of the United States for the District of Idaho, Eastern Division, a particular description of said property being as follows," and property is then

(Testimony of Donald L. Burnett.)

described. I will ask you if by acceptance of that right of redemption, if you felt that you were getting any right, title, or interest in that real estate

A. No, sir.

Q. Now I call your attention to page 30 of the same exhibit, there is a quit claim deed, and I will ask you if you felt that by the acceptance of that quit claim deed that you were acquiring any right, title or interest to the property described in the deed, which is the property involved in this action?

A. No, sir.

Q. I will ask you, did you try to make any other arrangements with the Title Insurance Company to issue a policy rather than going through this redemption process?

Mr. Davis: That is objected to as incompetent, irrelevant and immaterial, he did not make any other arrangements.

The Court: He may answer.

A. Yes, sir, I did try to.

Q. What did you try to do?

A. Similar to the Doctor Pond and the Doctor Merrill situations, by making a deposit with the clerk of the court of an amount to protect them against this situation. [64]

Q. Were you successful in that?

A. No sir, they insisted that I redeem.

Q. I think you testified that the Title Insurance Company or Mr. Seda did not require the redemption because he recognized this as a lien?

A. He did not recognize it as a lien.

(Testimony of Donald L. Burnett.)

Q. Then do I understand from your testimony that you effected this redemption as the only means open to you to save this sale? A. Yes, sir.

Q. And to furnish a title insurance policy such as demanded by the purchaser?

A. That is correct.

Mr. Bistline: That is all.

Mr. Davis: For the purpose of the record I want at this time to move to strike from the record all of the testimony of this witness with reference to what Mr. Seda told him as being hearsay, incompetent, irrelevant and immaterial.

The Court: Yes, I think it is, but I will take your motion under advisement up and and will give it such weight as I think it is entitled to.

Recross-Examination

By Mr. Davis:

Q. Who did you try to make these arrangements with to keep [65] from redeeming?

A. With the Title Insurance Company.

Q. Now then, if I understand your testimony, you went to the District Judge and got permission to redeem from the Marshal's sale and paid in the neighborhood of \$3300.00 of the Receiver's money, of the assets of this corporation, for the redemption certificate or the assignment of the right to redeem that you knew and had been advised wasn't worth a penny?

A. The Title Insurance Company told me and I had to or lose the \$80,000.00 sale.

(Testimony of Donald L. Burnett.)

Q. You knew that Chase had no legal right to the property at all, that the Title Insurance Company told you that he had no legal claim and that it was all superfluous, and still you went ahead and paid the money out?

A. That is what they told me.

Q. You went ahead and paid the money?

A. Yes, sir.

Q. You knew that you were recognizing this assignment by Jesse M. Chase as being legal, and you were doing it in order to make the sale go through?

A. We did it to consummate the sale.

Q. I want to ask you if it is your position that if this Court should hold that Mrs. Sisil's judgment is not a legal judgment in effect,—let me withdraw that,—I want to ask you, Mr. Burnett, if it is your position [66] that if this Court should hold that Mrs. Sisil's judgment has no legal effect as a judgment against this real property and this property, if you intend to sue her for the return of the money on the theory that the redemption was illegal or that you redeemed from an illegal judgment?

A. I have not formulated an opinion.

Q. You have discussed it with counsel?

A. Not to formulate an opinion.

Q. But you have discussed it, whether you would or not?

A. There was a discussion whether it was a technical legal possibility.

Q. (By Mr. Davis): I would like to inquire of counsel for the plaintiff if it is their position if they

(Testimony of Donald L. Burnett.)

should be successful in this, if they intend to try to proceed on the basis that it was illegal,—

Mr. Bistline: I will say this, that before this redemption was effected a survey was made by the Receiver to ascertain whether the dividends which would be available for Mrs. Sisil would be equivalent to the amount of money paid or put up for the redemption; after a careful survey it was decided that the dividend would be equivalent and therefore he would have no risk, and we felt that a suit would lie and be an offset [67] against any claim.

Mr. Davis: I think that is all.

Mr. Bistline: That is all.

The Court: I am interested in asking about one matter. You obtained an order from the District Court under whom you are a Receiver, to pay this money to the Marshal in making this redemption?

A. Yes, sir.

Q. Did you advise the Court at the time you received this order of the circumstances with which you were confronted in getting title, and that you had been advised that it was not necessary for you to legally do this, but that you had to do it, did you advise the Judge of that? A. Yes, sir.

Q. You told him that your counsel had advised you that it was not a legal application?

A. Yes, sir.

The Court: And the court made the order for you, knowing that it was not an obligation of Jesse M. Chase, Incorporated?

(Testimony of Donald L. Burnett.)

A. Yes, sir, after what Mr. Bistline said where we made some detailed analysis and felt that we would be paying Mrs. Sisil that amount of money,— [68]

The Court: I am interested in whether you or your attorney advised the Court that this was what you now say, an illegal payment of this money?

A. Yes, sir, I think the term “business duress” was used during the discussion.

The Court: I realize that the abstract of title, outside of this redemption, before the redemption was ever made and before the judgment was ever recorded, shows in the corporation. I take it now that the Receivership does not recognize any obligation to this Defendant. It is your contention, Mr. Bistline, that the fact that you have a judgment against Jesse M. Chase that there is no obligation against the corporation to pay it?

Mr. Bistline: No, your Honor, the corporation is obligated to her on the original obligation of the investment certificates; that suit would still lie, or would have been available to her up to the time of the filing of the Receivership.

The Court: But now that she didn't, it is your contention that her claim is not a valid claim?

Mr. Bistline: No, we recognize it is a valid claim against the corporation and the Receiver so testified. May I make another suggestion, that the balance sheet shows that this corporation was not [69]

insolvent but was solvent to some \$170,000.00, and paid income tax for 1947,—

The Court: Then I do not understand why there is a Receivership,—I think that Jesse M. Chase is a pretty smart man; he was the moving factor in getting this placed in a Receivership, certainly the Court was misinformed as to the fact that they could pay off all of their debts.

Mr. Bistline: I would like to introduce the income tax returns.

The Court: You can put them in if you desire, I don't know what help they will be to the Court. As far as this sale is concerned it is the business of Jesse M. Chase or who ever represented his business, Jesse M. Chase in the start, and it was Jesse M. Chase at the time the corporation was organized, and in my opinion it is still Jesse M. Chase. He was the moving factor in getting the Receiver appointed and the Receiver is more or less the agent now of Jesse M. Chase, not technically, but morally. This Receiver would not be here now except for the action of Jesse M. Chase; knowing him as I do know him I am convinced he is a pretty smart man. It seems to me that he could have handled this as well if he had not made these moves that have been made. There is an old saying that people who come into Court of equity and ask for relief should come with clean hands; I don't know how clean they are here, however, there may be a question of law and I am going to ask you Gentlemen for briefs on your positions. You may have time to answer whatever brief the plaintiff cares to present. I am going to

take this matter under advisement; unless there is some oral argument you wish to present now I will allow you ten days, Mr. Bistline, and Mr. Davis may have ten days in which to file his reply brief, and you may have an additional five if there are matters that you care to answer in Mr. Davis' brief.

State of Idaho,
County of Ada—ss.

I, G. C. Vaughan, hereby certify that I am the official Court Reporter for the United States District Court for the District of Idaho, and

I further certify that I took the evidence and proceedings had in and about the trial of the above-entitled cause in shorthand and thereafter transcribed the same into longhand (typewriting) and

I further certify that the foregoing transcript consisting of pages numbered consecutively to page 71 is a true and correct transcript of the evidence given and the proceedings had in and about the said trial.

In Witness Whereof, I have hereunto set my hand this 16th day of October, 1950.

/s/ G. C. VAUGHAN,
Court Reporter.

[Endorsed]: Filed October 24, 1950.

[Title of Court and Cause.]

CERTIFICATE

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the following papers are that portion of the original files designated and stipulated by the parties to be forwarded to the Ninth Circuit Court of Appeals, and as are necessary to the appeal under Rule 75 (RCP):

1. Amended Complaint (Attached, as Exhibit "A" to the Petition for Removal).
2. Answer to Amended Complaint and Amended Answer to Amended Complaint.
3. Transcript of Evidence.
4. Memorandum of Decision.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Notice of Appeal.
8. Designation of Record on Appeal.
9. Order Extending Time for Appeal to be docketed in the Circuit Court.
10. Stipulation to transmit original exhibits.
11. Exhibits Nos. 1 to 15 inclusive.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this 8th day of November, 1950.

[Seal] /s/ ED. M. BRYAN,
Clerk.

[Endorsed]: No. 12738. United States Court of Appeals for the Ninth Circuit. Fred D. Hilliard as Receiver of Jesse M. Chase, Inc., a Corporation, Appellant, vs. Louise B. Musselman Sisil, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Eastern Division.

Filed November 13, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the Circuit Court of Appeals
for the Ninth Circuit

No. 12738

FRED D. HILLIARD, Receiver of JESSE M.
CHASE, INC., A Corporation,

Appellant,

vs.

LOUISE B. MUSSELMAN SISIL,

Respondent.

STATEMENT OF POINTS

Appellant states that the points upon which he intends to rely on appeal in the above-entitled action, and he deems the entire record on appeal as necessary for the consideration of the points to be relied upon namely:

1. The trial court erred in entering judgment for the defendant and respondent for each of the following reasons:

(a) that defendant's answer, affirmative defenses, and counterclaim do not state facts sufficient to constitute a defense to plaintiff's amended complaint, or to state a cause of action as a counter claim;

(b) that the evidence is insufficient to constitute a defense to plaintiff's amended complaint, or to support defendant's counter claim.

(c) that the findings of fact are insufficient to support the judgment, and

(d) that the judgment is contrary to both the law and the evidence.

2. The trial court erred in finding in its Memorandum Decision

“That he (Jesse M. Chase) was deeply involved, principally by the issuance and sale of these investment certificates and on this account formed a corporation and deeded his property to it.”

for the reason and upon the ground that it is contrary to the evidence.

3. The trial court erred in making each of following findings of fact:

(a) That portion of Finding of Fact IV reading as follows:

“* * * the transfer by Jesse M. Chase and wife to the said Jesse M. Chase, Inc., a corporation of the real estate heretofore and in plaintiff's amended complaint described was without consideration;”

(b) That portion of Finding of Fact V reading as follows:

“* * * the said corporation was organized Solely for the benefit of the said Jesse M. Chase; that he was, for all practical purposes the sole and only owner of all of the corporation stock of said corporation, having used the names of a few of his employees in the incorporation of Jesse M. Chase, Inc., solely in order to comply with the corporation laws of the State of Idaho, and there was no consideration for the transfer of the assets of Jesse M. Chase, an individual to Jesse M. Chase, Inc., a corporation, and

that insofar as the rights of Jesse M. Chase, Inc., and of the defendant herein were concerned, the said Jesse M. Chase, Inc., and the said corporation held the assets in trust for the payment of defendant's claim."

(c) That portion of Finding of Fact VI reading as follows:

"* * * that the transfer of all of the assets of Jesse M. Chase used in and about the used car business operated by him, to said corporation in exchange for corporate stock, issued to said Jesse M. Chase, was a fraud upon the defendant herein,"

(d) That portion of Finding of Fact VI reading as follows:

"* * * that said Jesse M. Chase, Inc., took and accepted the real estate described in plaintiff's Amended Complaint and all of the assets, real and personal transferred to it by Jesse M. Chase, an individual as Trustee for the benefit of this defendant, and that the defendant's judgment against Jesse M. Chase in case No. 1539, upon its entry, was and is a valid lien upon the real estate in plaintiff's amended complaint referred to."

(e) All of Finding of Fact IX.

(f) That portion of Finding of Fact X reading as follows:

"That the said plaintiff herein, the Receiver of Jesse M. Chase, Inc., took over and accepted the real estate described in plaintiff's amended complaint, and took over and accepted any and

all other assets of the said corporation, subject to the judgment of Louise B. Musselman Sisil, and against Jesse M. Chase, an individual as aforesaid, * * *

(g) That portion of Finding of Fact X reading as follows:

“* * * and that Louise B. Musselman Sisil is entitled to a judgment and decree directing the plaintiff to make payment of any balance due upon her judgment as aforesaid, in the same manner as any and all other judgments entered against Jesse M. Chase, Inc., have been paid by said Receiver.”

(h) That portion of Finding of Fact XI reading as follows:

“* * * and that upon the filing and recording of said abstract of judgment, the same became and was a lien upon all of the assets of Jesse M. Chase, Inc., a corporation in accordance with the laws of the state of Idaho.”

for the reason that each and all of them are conclusions of law, are unsupported by the evidence, and are contrary to law and the evidence in the case.

4. The trial court erred in making finding of Fact VII for the reason that the facts therein found are immaterial, and, in no way constitute a defense or contribute to constituting a defense to plaintiff's amended complaint, and for the further reason that the same are conclusions of law, not supported by the evidence.

5. The trial court erred in making Finding of Fact No. VIII for the reason that the facts as found therein, or any of them, do not in any way constitute a defense, or contribute to constituting a defense to plaintiff's amended complaint, and are immaterial.

6. The trial court erred in making Finding of Fact XII for the reason that same is a conclusion of law, contrary to both the evidence and the law.

7. The trial court erred in making Conclusions of Law numbered I, II, III, IV, V and VI for the reason that there is no evidence in the record to sustain same, and that each and all of them are contrary to law, and to the evidence.

8. The trial court erred in not entering judgment for plaintiff as prayed in his complaint for the reason that the evidence establishes a prima facie case for plaintiff, and there is no evidence in the record sufficient to constitute a defense thereto.

/s/ F. M. BISTLINE,

/s/ R. DON BISTLINE,

Attorneys for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 16, 1950.

